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2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 106

An Act to amend certain Acts with respect to Easements and other matters

The Hon. G. Sorbara
Minister of Consumer and Commercial Relations

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DEC 2 9 1989
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1st Reading December 20, 1989
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

GENERAL. The Bill makes certain changes in the law with respect to municipal easements and easements of the Ministry of Government Services. It also clarifies part of the *Registry Act*.

SECTION 1.—Subsection 1. The amendment to subsection 106 (7) of the *Registry Act* clarifies that the registration of a notice of claim does not extend a claim that has expired for some reason other than the expiry of the notice period in the *Registry Act*.

Subsection 2. Section 106a which is added to the *Registry Act* relates to public utility easements of municipalities and easements of the Ministry of Government Services. Easements that existed on July 31, 1981 continue until December 31, 1999 even if they were not protected by a notice of claim. Persons who are prejudiced by this continuation are eligible to receive compensation unless the easement is abandoned. These easements can be protected beyond December 31, 1999 by the registration of a notice of claim registered before that date.

SECTION 2. Section 195a which is added to the *Municipal Act* relates to public utilities of municipalities. The common law is changed so that a public utility easement does not have to be attached to any particular parcel of land to be valid. Public utilities placed on land with the consent or acquiescence of the owner are exempted from Part III of the *Registry Act* which relates to the investigation of titles and the expiry of certain claims. Persons are prohibited from interfering with public utilities that are not protected by easements unless they obtain a court order or the municipality consents. Municipalities are given the right to enter lands to repair their utilities. In cases where a municipality puts a public utility on what was mistakenly believed to be a road allowance, the municipality is deemed to have an easement and the owner is given a right to compensation determined in accordance with the *Expropriations Act*.

SECTION 3. Section 9a which is added to the *Ministry of Government Services Act* relates to public utilities of the Ministry of Government Services. It provides the same scheme for the Ministry of Government Services as the amendment in section 2 of the Bill provides for municipalities.

Bill 106 1989

An Act to amend certain Acts with respect to Easements and other matters

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 106 (7) of the *Registry Act*, being chapter 445 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 17, section 4, is amended by adding at the end thereof "other than as a result of subsection (1)".

(2) The said Act is amended by adding thereto the following section:

106a.—(1) In this section, Definitions

"Ministry of Government Services" means Her Majesty in right of the Ministry of Government Services as represented by the Minister of Government Services;

"municipality" means a municipality within the meaning of the *Municipal Act* and includes a regional, metropolitan or district municipality, the County of Oxford and a local board within the meaning of the *Municipal Affairs Act*; R.S.O. 1980, cc. 302, 303

"public utility easement" means an easement in respect of a water works or water supply system, sewage works, electrical power or energy generating, transmission or distribution system, street lighting system, natural or artificial gas works or supply system, or a transportation system.

(2) Despite sections 105 and 106, a public utility easement of a municipality or an easement of the Ministry of Government Services that existed on the 31st day of July, 1981 continues until the 31st day of December, 1999. Continuation of public utility easements

(3) If, except for subsection (2), an easement would not affect land, a person who has an interest in the land acquired Eligibility for compensation

on or after the 1st day of August, 1981 and before the day this section comes into force is entitled to compensation for the easement.

Idem

(4) Subsection (3) does not apply to a person if the easement is specifically referred to in,

(a) the instrument by which the person acquired the interest; or

(b) a registered instrument executed by the person before the day this section comes into force.

Time of calculation

(5) Compensation shall be calculated as though the easement had been expropriated on the earlier of,

(a) the day the person who has an interest in the land gives the municipality or the Ministry of Government Services notice that he or she claims compensation under this section; or

(b) the day the municipality or the Ministry of Government Services gives the person who has an interest in the land notice of its easement.

Calculation of compensation
R.S.O. 1980, c. 148

(6) The *Expropriations Act* applies with necessary modifications to claims for compensation.

Abandonment of easement

(7) A municipality or the Ministry of Government Services is relieved from paying compensation for an easement if it,

(a) removes anything placed under the authority of the easement;

(b) restores the land to the condition it was in immediately before any removal; and

(c) abandons the easement.

Notices of claim

(8) A notice of claim in respect of a public utility easement of a municipality or an easement of the Ministry of Government Services registered before the 31st day of December, 1999 is as effective as if it had been registered on the 31st day of July, 1981.

2. The *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

195a.—(1) In this section, Definitions

"municipal public utility" means a public utility owned and operated by a municipality;

"municipal public utility easement" means an easement of a municipality in respect of a municipal public utility;

"municipality" includes a regional, metropolitan or district municipality, the County of Oxford and a local board within the meaning of the *Municipal Affairs Act*; R.S.O. 1980, c. 303

"public utility" means a water works or water supply system, sewage works, electrical power or energy generating, transmission or distribution system, street lighting system, natural or artificial gas works or supply system, or a transportation system.

(2) A municipal public utility easement does not have to be appurtenant or annexed to or for the benefit of any specific parcel of land to be valid. Dominant tenement

(3) Part III of the *Registry Act* does not apply to a claim of a person in respect of a part of a municipal public utility constructed on land before this section comes into force with the consent or acquiescence of the owner of the land. R.S.O. 1980, c. 445, Part III not to apply

(4) No person shall interfere with a part of a municipal public utility for which there is no municipal public utility easement unless, Interference with utilities

(a) the municipality consents; or

(b) the interference is authorized by a court order under this section.

(5) The District Court may make an order authorizing interference with a part of a municipal public utility on the application of a person who has an interest in the land where the part is located if the use of the land by the person is substantially affected. Court orders with respect to utilities

(6) A person making an application for an order under subsection (5) in respect of a part of a municipal public utility shall give the municipality ninety days notice of the application or such other notice as the court may direct. Notice

(7) In making an order under subsection (5), the court may make such other orders as it considers necessary including an order that the applicant provide an easement for the alterna- Other orders

tive location of the public utility for such compensation as the court may determine.

Stay of orders

(8) The court shall stay an order under subsection (5) at the request of the municipality for such time as the court determines to allow the municipality to acquire an interest in land to accommodate the part of its public utility that is subject to the order.

Right to repair utilities

(9) Subject to any court order under this section, a municipality may enter upon any land to repair and maintain its public utilities.

Utilities located by mistake

(10) If, before this section comes into force, a municipality located a part of a municipal public utility where it had no right to do so in the mistaken belief that the part was being located on a municipal road allowance, the municipality that owns and operates the utility shall be deemed to have an easement in respect of the utility and the owner of the land on which the part is located shall be entitled to compensation for the easement determined in accordance with the *Expropriations Act*.

R.S.O. 1980, c. 148

Offence

(11) Every person who knowingly contravenes subsection (4) is guilty of an offence.

3. The *Ministry of Government Services Act*, being chapter 279 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Definitions

9a.—(1) In this section,

"government public utility" means a public utility owned and operated by Her Majesty in right of the Ministry as represented by the Minister;

"government public utility easement" means an easement of Her Majesty in right of the Ministry as represented by the Minister in respect of a government public utility;

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Court orders with respect to utilities

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Other orders

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Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Easement Statute Law Amendment Act, 1989*.

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1st Reading December 20th, 1989
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(Reprinted as amended by the Committee of the Whole House)

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"public utility easement" means an easement in respect of a water works or water supply system, sewage works, steam or hot water distribution system, electrical power or energy generating, transmission or distribution system, street lighting system, natural or artificial gas works or supply system, or a transportation system.

(2) Despite sections 105 and 106, a public utility easement of a municipality or an easement of the Ministry of Government Services that existed on the 31st day of July, 1981 continues until the 31st day of December, 1999. Continuation of public utility easements

Eligibility for compensation

(3) If, except for subsection (2), an easement would not affect land, a person who has an interest in the land acquired on or after the 1st day of August, 1981 and before the day this section comes into force is entitled to compensation for the easement.

Idem

(4) Subsection (3) does not apply to a person if the easement is specifically referred to in,

(a) the instrument by which the person acquired the interest; or

(b) a registered instrument executed by the person before the day this section comes into force.

Time of calculation

(5) Compensation shall be calculated as though the easement had been expropriated on the earlier of,

(a) the day the person who has an interest in the land gives the municipality or the Ministry of Government Services notice that he or she claims compensation under this section; or

(b) the day the municipality or the Ministry of Government Services gives the person who has an interest in the land notice of its easement.

Calculation of compensation

R.S.O. 1980, c. 148

(6) The *Expropriations Act* applies with necessary modifications to claims for compensation.

Abandonment of easement

(7) A municipality or the Ministry of Government Services is relieved from paying compensation for an easement if it,

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(b) restores the land to the condition it was in immediately before any removal; and

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2. The *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

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(5) The District Court may make an order authorizing interference with a part of a municipal public utility on the application of a person who has an interest in the land where the part is located if the use of the land by the person is substantially affected. Court orders with respect to utilities

(6) A person making an application for an order under subsection (5) in respect of a part of a municipal public utility shall give the municipality ninety days notice of the application or such other notice as the court may direct. Notice

Other orders

(7) In making an order under subsection (5), the court may make such other orders as it considers necessary including an order that the applicant provide an easement for the alternative location of the public utility for such compensation as the court may determine.

Stay of orders

(8) The court shall stay an order under subsection (5) at the request of the municipality for such time as the court determines to allow the municipality to acquire an interest in land to accommodate the part of its public utility that is subject to the order.

Right to repair utilities

(9) Subject to any court order under this section, a municipality may enter upon any land to repair and maintain its public utilities.

Utilities located by mistake

(10) If, before this section comes into force, a municipality located a part of a municipal public utility where it had no right to do so in the mistaken belief that the part was being located on a municipal road allowance, the municipality that owns and operates the utility shall be deemed to have an easement in respect of the utility and the owner of the land on which the part is located shall be entitled to compensation for the easement determined in accordance with the *Expropriations Act*.

R.S.O. 1980, c. 148

Offence

(11) Every person who knowingly contravenes subsection (4) is guilty of an offence.

3. The *Ministry of Government Services Act*, being chapter 279 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Definitions

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R.S.O. 1980, c. 148

Offence

(10) Every person who knowingly contravenes subsection (3) is guilty of an offence.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Easement Statute Law Amendment Act, 1990*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 106

(Chapter 4
Statutes of Ontario, 1990)



An Act to amend certain Acts with respect to Easements and other matters

The Hon. G. Sorbara
Minister of Consumer and Commercial Relations

1st Reading	December 20th, 1989
2nd Reading	June 4th, 1990
3rd Reading	June 18th, 1990
Royal Assent	June 21st, 1990

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Idem

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(7) The court shall stay an order under subsection (4) at the request of the Minister for such time as the court determines to allow the Government to acquire an interest in land to accommodate the part of the public utility that is subject to the order. Stay of orders

(8) Subject to any court order under this section, the Minister may enter upon any land to repair and maintain a government public utility. Right to repair utilities

(9) If, before this section comes into force, the Government located a part of a government public utility where it had no right to do so in the mistaken belief that the part was being located on a municipal road allowance, Her Majesty the Queen in right of Ontario as represented by the Minister shall be deemed to have an easement in respect of the utility and the owner of the land on which the part is located shall be Utilities located by mistake

entitled to compensation for the easement determined in accordance with the *Expropriations Act*.

R.S.O. 1980, c. 148

Offence

(10) Every person who knowingly contravenes subsection (3) is guilty of an offence.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Easement Statute Law Amendment Act, 1990*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 107

An Act to revise the Police Act and amend the law relating to Police Services

The Hon. S. Offer
Solicitor General



1st Reading December 20th, 1989
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

The Bill replaces the *Police Act*. The following are some of the proposed changes:

1. A declaration of principles is included (section 1).

2. Every municipality responsible for providing police services is required to establish a police services board to govern the municipal police force (section 27). These boards (formerly boards of commissioners of police) will be supervised by the Ontario Civilian Commission on Police Services (formerly the Ontario Police Commission) (Part II).

3. The minimum educational standard required of candidates for the position of police officer is raised from two to four years of secondary education (section 43).

4. Every police force is required to establish and implement an employment equity plan (section 48).

5. Special constables will be appointed by municipal police services boards and by the Commissioner of the Ontario Provincial Police (section 53).

6. The category of First Nations Constable is created (section 54).

7. Provisions relating to police disciplinary proceedings are revised (Part V).

8. A province-wide mandatory system for dealing with public complaints is introduced, based on the system currently in use in The Municipality of Metropolitan Toronto (Part VI).

9. A special investigations unit of the Ministry of the Solicitor General is established to investigate police conduct and to lay charges where appropriate (Part VII).

10. Bargaining, conciliation and arbitration provisions that apply to municipal police forces are revised (Part VIII).

11. The regulation-making powers of the Lieutenant Governor in Council are expanded to cover subjects such as standards of police services, the administration and operation of police forces, police pursuits and political activities (section 133).

12. Distinctions between municipal police forces and the Ontario Provincial Police are reduced.

Bill 107 1989

An Act to revise the Police Act and amend the law relating to Police Services

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Declaration of principles

1. Police services shall be provided throughout Ontario in accordance with the following principles:

1. The need to ensure the safety and security of all persons and property in Ontario.

2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code, 1981*. 1981, c. 53

3. The need for co-operation between the providers of police services and the communities they serve.

4. The importance of respect for victims of crime and understanding of their needs.

5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.

6. The need to ensure that police forces are representative of the communities they serve.

Definitions

2. In this Act,

"association" means an association whose members belong to one police force and whose objects include the improvement of their working conditions and remuneration;

"board" means, except in Part VI, a municipal police services board;

"chief of police" means a municipal chief of police or the Commissioner of the Ontario Provincial Police and includes an acting chief of police;

"Commission" means the Ontario Civilian Commission on Police Services;

"Commissioner" means, except in Part VI, the Commissioner of the Ontario Provincial Police;

"member of a police force" means a police officer, and in the case of a municipal police force includes a civilian employee;

"municipality" includes district, metropolitan and regional municipalities and the County of Oxford;

"police force" means the Ontario Provincial Police or a municipal police force;

"police officer" means a chief of police or any other police officer, but does not include a special constable, a First Nations Constable, a by-law enforcement officer or an auxiliary member of a police force;

"prescribed" means prescribed by the regulations;

"regulations" means the regulations made under this Act.

PART I

RESPONSIBILITY FOR POLICE SERVICES

SOLICITOR GENERAL

Administration of Act

3.—(1) This Act, except Part VI, shall be administered by the Solicitor General.

Duties and powers of Solicitor General

(2) The Solicitor General shall,

(a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels;

(b) monitor boards and police forces to ensure that they comply with prescribed standards of service;

(c) monitor the establishment and implementation of employment equity plans;

(d) develop and promote programs to enhance professional police practices, standards and training;

(e) conduct a system of inspection and review of police forces across Ontario;

(f) assist in the co-ordination of police services;

(g) consult with and advise boards, municipal chiefs of police, employers of special constables and associations on matters relating to police and police services;

(h) develop, maintain and manage programs and statistical records and conduct research studies in respect of police services and related matters;

(i) provide to boards and municipal chiefs of police information and advice respecting the management and operation of police forces, techniques in handling special problems and other information calculated to assist;

(j) issue directives and guidelines respecting policy matters;

(k) develop and promote programs for community-oriented police services;

(l) operate the Ontario Police College.

Ontario Police College continued

(3) The police college known as the Ontario Police College for the training of members of police forces is continued.

MUNICIPALITIES

Police services in municipalities

4.—(1) Every municipality to which this subsection applies shall provide adequate and effective police services in accordance with its needs.

Application of subsection (1)

(2) Subsection (1) applies to,

(a) cities, towns, villages and townships (other than area municipalities within regional or metropolitan municipalities); and

(b) regional and metropolitan municipalities.

Exception, Muskoka

(3) Subsection (1) does not apply to The District Municipality of Muskoka or to its area municipalities.

Exception, Ottawa-Carleton

(4) Subsection (1) does not apply to The Regional Municipality of Ottawa-Carleton but does apply to its area municipalities.

Exception, Oxford County

(5) Subsection (1) does not apply to the County of Oxford but does apply to its area municipalities.

Exemption of towns of less than 5,000

R.S.O. 1980, c. 31

(6) The Lieutenant Governor in Council may, on the Solicitor General's recommendation, exempt any town having a population of less than 5,000 according to the last enumeration taken under section 14 of the *Assessment Act* from the application of subsection (1), and the exemption continues in effect until it is revoked.

Restriction, villages and townships

(7) Subsection (1) applies to a village or township only if it has been so designated by the Lieutenant Governor in Council on the Solicitor General's recommendation; the designation may relate to all or part of the village or township.

Methods of establishing municipal police forces

5. A municipality's responsibility for providing police services shall be discharged in one of the following ways:

1. The board may appoint the members of a police force under clause 31 (1) (a), in which case the municipal council shall pay the cost of the police force.

2. The board may enter into an agreement under section 7 (sharing police services).

3. The council may enter into an agreement under section 10 (agreements for provision of police services by O.P.P.).

4. With the Commission's approval, the municipality may adopt a different method of providing police services.

Amalgamation of police forces

6.—(1) Despite any other Act, two or more municipalities that have police forces may enter into an agreement to amalgamate them.

Contents of amalgamation agreement

(2) The agreement shall deal with,

(a) the establishment and composition of a board for the amalgamated police forces;

(b) the amalgamation of the police forces and the appointment or transfer of their members;

(c) the amalgamated board's use of the assets and its responsibility for the liabilities associated with the police forces;

(d) the budgeting of the cost for the operation of the amalgamated police force;

(e) any other matter that is necessary or advisable to effect the amalgamation.

Commission's approval

(3) The agreement does not take effect until the Commission has approved the organization of the amalgamated police force.

Exception, board appointments

(4) Appointments to a board for amalgamated police forces may be made before the agreement takes effect.

Municipal agreements for sharing police services

7. Two boards may agree that one board will provide police services to the other, on the conditions set out in the agreement.

Additional municipal police forces

8.—(1) A municipality to which subsection 4 (1) (obligation to provide police services) does not apply may, with the Commission's approval, establish and maintain a police force.

Transition

R.S.O. 1980, c. 381

(2) An approval given or deemed to have been given under section 19 of the *Police Act* in respect of a police force that

was being maintained on the day before this Act comes into force shall be deemed to have been given under this section.

Revocation

(3) The Commission may revoke an approval given or deemed to have been given under this section.

Failure to provide police services

9.—(1) If the Commission finds that a municipality to which subsection 4 (1) applies is not providing police services, it may request that the Commissioner have the Ontario Provincial Police give assistance.

Inadequate police services

(2) If the Commission finds that a municipal police force is not providing adequate and effective police services or is not complying with this Act or the regulations, it may communicate that finding to the board of the municipality and direct the board to take the measures that the Commission considers necessary.

Idem

(3) If the board does not comply with the direction, the Commission may request that the Commissioner have the Ontario Provincial Police give assistance.

Crown Attorney's request

(4) In any area for which a municipality is required to provide police services, the Crown Attorney may request that the Commissioner have the Ontario Provincial Police give assistance.

Board's request

(5) A board may, by resolution, request that the Commissioner have the Ontario Provincial Police give assistance.

Request of chief of police in emergency

(6) A municipal chief of police who is of the opinion that an emergency exists in the municipality may request that the Commissioner have the Ontario Provincial Police give assistance.

Chief of police to advise board

(7) A chief of police who makes a request under subsection (6) shall advise the chair of the board of the fact as soon as possible.

Assistance of O.P.P.

(8) When a request is made under this section, the Commissioner shall have the Ontario Provincial Police give such assistance as he or she considers necessary.

Cost of services

(9) The Commissioner shall certify the cost of the services provided under this section by the Ontario Provincial Police and, unless the Solicitor General directs otherwise, the municipality shall pay that amount to the Treasurer of Ontario.

Idem

(10) The amount may be deducted from any grant payable to the municipality out of provincial funds or may be

recovered by a court action, with costs, as a debt due to Her Majesty.

Municipal agreements for provision of police services by O.P.P.

10.—(1) The Solicitor General may enter into an agreement with the council of a municipality for the provision of police services for the municipality by the Ontario Provincial Police.

Board's consent

(2) The agreement requires the board's consent.

Collective bargaining

(3) No agreement shall be entered into under this section if, in the Solicitor General's opinion, the council seeks the agreement for the purpose of defeating the collective bargaining provisions of this Act.

Duties of O.P.P.

(4) When the agreement comes into effect, the members of the Ontario Provincial Police assigned to the municipality shall provide police services, including by-law enforcement, for the municipality, and shall perform any other duties that are specified in the agreement.

Payment into Consolidated Revenue Fund

(5) The amounts received from the municipality under the agreement shall be paid into the Consolidated Revenue Fund.

Role of board

(6) If the municipality has an agreement under this section, section 31 (responsibilities of board), section 38 (municipal police force) and clause 39 (2) (a) (estimates respecting police force) do not apply; however, the board shall advise the Solicitor General and the senior officer of the Ontario Provincial Police in the municipality with respect to police services in the municipality, and may generally determine priorities in the municipality with respect to police services, in accordance with the agreement and with provincial policies affecting the Ontario Provincial Police.

Fines

11.—(1) This section applies if a municipality is entitled to receive fines paid as a result of prosecutions instituted by police officers of the municipal police force.

Idem

(2) If the municipality does not have its own police force because of an agreement under section 7 or 10, the police officers who are assigned to the municipality under the agreement shall, for the purposes of determining entitlement to fines, be deemed to be police officers of the municipal police force.

Rates for cost of police services

12.—(1) With the Commission's approval, the costs incurred by a municipality in providing police services may be paid by levying different rates for different areas defined by the municipal council or by levying rates in some but not all areas.

Exemption for farm lands and buildings

(2) With the Commission's approval, the municipal council may grant a total or partial exemption from a rate or rates levied under subsection (1) to lands and buildings used exclusively for farming purposes.

Special areas

13.—(1) If, because of the establishment of a business or for any other reason, special circumstances or abnormal conditions in an area make it inequitable, in the Solicitor General's opinion, to impose the responsibility for police services on a municipality or on the Province, the Lieutenant Governor in Council may designate the area as a special area.

Agreement for provision of police services by O.P.P.

(2) The person who operates the business or owns the special area shall enter into an agreement with the Solicitor General for the provision of police services by the Ontario Provincial Police for the special area.

Duties of O.P.P., payment

(3) Subsections 10 (4) and (5) apply to the agreement with necessary modifications.

Failure to enter into agreement

(4) If the person who operates the business or owns the special area does not enter into an agreement as subsection (2) requires, the Ontario Provincial Police shall provide police services for the area.

Cost of services

(5) The costs of the services may be recovered from the person by a court action, with costs, as a debt due to Her Majesty.

Police services outside municipality

14. A municipality that has an interest in land outside the territory of the municipality may agree to pay all or part of the cost of providing police services for the land.

Municipal by-law enforcement officers

15.—(1) A municipal council may appoint persons to enforce the by-laws of the municipality.

Peace officers

(2) Municipal by-law enforcement officers are peace officers for the purpose of enforcing municipal by-laws.

Aid to survivors

16. A municipal council may grant financial or other assistance for the benefit of the surviving spouses and children of members of the municipal police force who die from injuries received or illnesses contracted in the discharge of their duties.

ONTARIO PROVINCIAL POLICE

Commissioner

17.—(1) There shall be a Commissioner of the Ontario Provincial Police who shall be appointed by the Lieutenant Governor in Council.

(2) Subject to the Solicitor General's direction, the Commissioner has the general control and administration of the Ontario Provincial Police and the employees connected with it. Functions

(3) The Commissioner shall prepare and implement an employment equity plan in accordance with section 48 and the regulations. Employment equity plans

(4) After the end of each calendar year, the Commissioner shall file with the Solicitor General an annual report on the affairs of the Ontario Provincial Police. Annual report

18.—(1) The Ontario Provincial Police shall consist of the Commissioner and other police officers appointed under the *Public Service Act*. Composition of O.P.P.

R.S.O. 1980, c. 418

(2) The Commissioner shall establish the ranks within the Ontario Provincial Police and shall determine the rank of each police officer. Ranks

(3) The Lieutenant Governor in Council may name police officers of the Ontario Provincial Police to the rank of commissioned officers and may authorize the issue of commissions to them under the Great Seal. Commissioned officers

(4) The Commissioner may appoint such other employees as are required in connection with the Ontario Provincial Police. Employees

19.—(1) The Ontario Provincial Police have the following responsibilities: Responsibilities of O.P.P.

1. Providing police services in respect of the parts of Ontario that do not have municipal police forces other than by-law enforcement officers.

2. Providing police services in respect of all navigable bodies and courses of water in Ontario, except those that lie within municipalities designated by the Solicitor General.

3. Maintaining a traffic patrol on the King's Highway, except the parts designated by the Solicitor General.

4. Maintaining a traffic patrol on the connecting links within the meaning of section 21 of the *Public Transportation and Highway Improvement Act* that are designated by the Solicitor General. R.S.O. 1980, c. 421

5. Maintaining investigative services to assist municipal police forces on the Solicitor General's direction or at the Crown Attorney's request.

Municipal by-laws

(2) The Ontario Provincial Police have no responsibilities in connection with municipal by-laws, except under agreements made in accordance with section 10.

Aid to survivors

20. The Lieutenant Governor in Council may, out of money appropriated for that purpose by the Legislature, grant financial or other assistance for the benefit of the surviving spouses and children of members of the Ontario Provincial Police who die from injuries received or illnesses contracted in the discharge of their duties.

PART II

Ontario Civilian Commission on Police Services

Commission continued

21.—(1) The commission known as the Ontario Police Commission is continued under the name of "Ontario Civilian Commission on Police Services".

Composition

(2) The Commission shall consist of not fewer than three and not more than nine members who shall be appointed by the Lieutenant Governor in Council.

Chair

(3) The Lieutenant Governor in Council may designate one of the members of the Commission to be the chair.

Delegation

(4) The chair may authorize a member of the Commission to exercise the Commission's powers and perform its duties with respect to a particular matter, but the authority conferred on the Commission by sections 23 and 24 may not be delegated.

Quorum

(5) Two members of the Commission constitute a quorum.

Meetings open to public

(6) The meetings of the Commission shall be open to the public unless the Commission directs otherwise, and notice of meetings that are open to the public shall be published in the manner that the Commission determines.

Exception

(7) The Commission may direct that a meeting be closed to the public if it is of the opinion that,

(a) matters involving public security may be disclosed at the meeting and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of

adhering to the principle that meetings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed at the meeting of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public.

Admissibility of documents

(8) A document purporting to be issued by the Commission and signed by one of its members is admissible in evidence without proof of the signature or authority of the person signing.

Annual report

(9) After the end of each calendar year, the Commission shall file with the Solicitor General an annual report on its affairs.

Expenses

(10) The money required for the Commission's purposes shall be paid out of the amounts appropriated by the Legislature for that purpose.

Powers and duties of Commission

22.—(1) The Commission's powers and duties include,

(a) if the Solicitor General advises the Commission that a board or municipal police force is not complying with prescribed standards of police services,

(i) directing the board or police force to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (1);

(b) if the Solicitor General advises the Commission that a board or municipal chief of police is not complying with the requirements of this Act and the regulations respecting employment equity plans,

(i) directing the board or chief of police to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (2);

(c) conducting investigations with respect to municipal police matters under section 25;

(d) conducting inquiries into matters relating to crime and law enforcement under section 26;

(e) inquiring into any matter regarding the designation of a municipality under subsection 4 (7) (police services in villages and townships) and, after a hearing, making recommendations to the Solicitor General;

(f) hearing and disposing of appeals by members of police forces in accordance with Part V.

Powers of Commission in hearings, investigations and inquiries R.S.O. 1980, c. 411

(2) When the Commission conducts a hearing, investigation or inquiry, it has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the proceeding as if it were an inquiry under that Act.

Counsel

(3) At the Commission's request, the Solicitor General may appoint counsel to assist the Commission in a hearing, investigation or inquiry.

Sanctions for failure to comply with prescribed standards of police services

23.—(1) If the Commission is of the opinion, after holding a hearing, that a board or municipal police force has flagrantly or repeatedly failed to comply with prescribed standards of police services, the Commission may take any of the following measures or any combination of them:

(a) suspending the chief of police, one or more members of the board, or the whole board, for a specified period;

(b) removing the chief of police, one or more members of the board, or the whole board from office;

(c) disbanding the police force and requiring the Ontario Provincial Police to provide police services for the municipality;

(d) appointing an administrator to perform specified functions with respect to police matters in the municipality for a specified period.

Sanctions for failure to comply with requirements respecting employment equity plans

(2) If the Commission is of the opinion, after holding a hearing, that a board or municipal chief of police has failed to comply with the requirements of this Act and the regulations respecting employment equity plans, the Commission may

take any of the following measures or any combination of them:

(a) suspending the chief of police, one or more members of the board, or the whole board, for a specified period;

(b) removing the chief of police, one or more members of the board, or the whole board from office;

(c) appointing an administrator to perform specified functions with respect to employment equity, recruitment and promotion in the police force for a specified period.

Defence

(3) The Commission shall not take measures under subsection (2) with respect to the failure of a chief of police to meet specific goals or timetables contained in the employment equity plan if the Commission finds that the chief of police has made all reasonable efforts to meet them.

Powers of administrator

(4) An administrator appointed under clause (1) (d) or (2) (c) has all the powers necessary for the performance of his or her functions.

Replacement of chief of police

(5) If the Commission suspends or removes the chief of police, it may appoint a person to replace him or her.

Parties

(6) The parties to the hearing are the chief of police, the board and any member of the board that the Commission designates.

Idem

(7) The Commission may add parties at any stage of the hearing on the conditions it considers proper.

Replacement of suspended or removed member

(8) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member.

No reappointment of suspended or removed member

(9) A member who has been removed shall not be reappointed to the board, and a member who has been suspended shall not be reappointed during the period of suspension.

Appeal to Divisional Court

(10) A party may appeal to the Divisional Court within thirty days of the Commission's decision.

Grounds for appeal

(11) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Idem

(12) An appeal may also be made from a finding that a chief of police has made all reasonable efforts to meet the specific goals and timetables contained in an employment equity plan.

Appeal by non-parties

(13) If the consent of the Attorney General is sought within thirty days of the Commission's decision and is given, a person who is not a party may appeal under subsection (12) as if he or she were a party.

Emergency, interim order

24.—(1) The Commission may make an interim order under subsection 23 (1), without notice and without holding a hearing, if it is of the opinion that an emergency exists and that the interim order is necessary in the public interest.

Restriction

(2) The Commission shall not remove a person from office or disband a police force by means of an interim order.

Investigations

25.—(1) The Commission may, at the Solicitor General's request, at a municipal council's request or of its own motion, investigate, inquire into and report on,

(a) the conduct or the performance of duties of a municipal chief of police or other municipal police officer, an auxiliary member of a municipal police force, a special constable, a by-law enforcement officer or a member of a board;

(b) the administration of a municipal police force;

(c) the manner in which police services are provided for a municipality;

(d) the police needs of a municipality.

Cost of investigation

(2) The cost of an investigation conducted at a council's request shall be paid by the municipality, unless the Solicitor General directs otherwise.

Report

(3) The Commission shall communicate its report of an investigation under subsection (1) to the Solicitor General at his or her request and to the board or council at its request, and may communicate the report to any other person as the Commission considers advisable.

Penalties, member of police force

(4) If the Commission concludes after a hearing that a member of a police force is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may direct that the member be,

(a) demoted as the Commission specifies, permanently or for a specified period;

(b) dismissed; or

(c) retired, if the member is entitled to retire.

Penalties, member of board

(5) If the Commission concludes that a member of a board is guilty of misconduct or is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may remove or suspend the member.

Appeal to Divisional Court

(6) A member of a police force or of a board on whom a penalty is imposed under subsection (4) or (5) may appeal to the Divisional Court within thirty days of receiving notice of the Commission's decision.

Grounds for appeal

(7) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Replacement of suspended or removed member

(8) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member.

No reappointment of suspended or removed member

(9) A member who has been removed shall not be reappointed to the board, and a member who has been suspended shall not be reappointed during the period of suspension.

Inquiries

26.—(1) The Lieutenant Governor in Council may direct the Commission to inquire into and report to the Lieutenant Governor in Council on any matter relating to crime or law enforcement, and shall define the scope of the inquiry in the direction.

Application of R.S.O. 1980, c. 411, ss. 4, 6

(2) Sections 4 (hearings open, exceptions) and 6 (stated case) of the *Public Inquiries Act* apply to inquiries conducted under this section.

Rights of witnesses

(3) Witnesses at inquiries conducted under this section have the right to retain and instruct counsel and all the other rights of witnesses in civil courts.

Offence

(4) Any person who knowingly discloses, without the Commission's consent, evidence taken in private at an inquiry conducted under this section or information likely to identify the witness is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

PART III

MUNICIPAL POLICE SERVICES BOARDS

Police services boards

27.—(1) There shall be a police services board for every municipality that maintains a police force.

Boards of commissioners of police continued as police services boards

(2) Every board of commissioners of police constituted or continued under the *Police Act* or any other Act and in existence on the day this Act comes into force is continued as a police services board.

R.S.O. 1980, c. 381

Name

(3) A board shall be known as "*(insert name of municipality)* Police Services Board".

Three-member boards in smaller municipalities

(4) The board of a municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* does not exceed 25,000 shall consist of,

R.S.O. 1980, c. 31

(a) the head of the municipal council; and

(b) two persons appointed by the Lieutenant Governor in Council.

Five-member boards in larger municipalities

(5) The board of a municipality, other than a regional or metropolitan municipality, whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 25,000 shall consist of,

(a) the head of the municipal council;

(b) one person appointed by resolution of the council; and

(c) three persons appointed by the Lieutenant Governor in Council.

Smaller municipalities, option to expand board

(6) The council of a municipality to which subsection (4) would otherwise apply may determine, by resolution, that the composition of its board shall be as described in subsection (5).

Transition

R.S.O. 1980, c. 381

(7) A resolution passed under clause 8 (2a) (b) of the *Police Act* before the day this Act comes into force shall be deemed to have been passed under subsection (6).

Regional and metropolitan municipalities

(8) The board of a regional or metropolitan municipality shall consist of,

(a) two council members appointed by resolution of the municipal council; and

(b) three persons appointed by the Lieutenant Governor in Council.

Seven-member boards in certain circumstances R.S.O. 1980, c. 31

(9) The council of a regional or metropolitan municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 300,000 may apply to the Lieutenant Governor in Council for an increase in the size of its board; if the Lieutenant Governor in Council approves the application, the board shall consist of,

(a) the head of the council, or another council member appointed by resolution of the council;

(b) two council members appointed by resolution of the council; and

(c) four persons appointed by the Lieutenant Governor in Council.

Vacancies

(10) If the position of a member appointed by the Lieutenant Governor in Council becomes vacant, the Solicitor General may appoint a replacement to act until the Lieutenant Governor in Council makes a new appointment.

Idem

(11) If the position of a member appointed by a municipal council becomes vacant, the board shall notify the council, which shall forthwith appoint a replacement.

Remuneration

(12) The council shall pay the members of the board who are appointed by the Lieutenant Governor in Council or Solicitor General remuneration that is at least equal to the prescribed amount.

Judges and justices of the peace ineligible

(13) No judge or justice of the peace shall be appointed as a member of a board.

Transition, judges and justices of the peace

(14) A judge or justice of the peace who is a member of a board on the day this Act comes into force may continue to be a member until the third anniversary of that day.

Transition, municipalities without boards

(15) In the case of a municipality that is required by subsection (1) to have a police services board and that does not, on the day this Act comes into force, have a board of commissioners of police, the following rules apply:

1. Subsection (1) does not apply to the municipality until the first anniversary of the coming into force of this Act.

2. Until subsection (1) applies to the municipality, the council shall perform the duties and may exercise the powers that this Act imposes and confers on police services boards.

Chair

28.—(1) The Lieutenant Governor in Council shall designate a member of each board to be its chair.

Transition

(2) The person who is, on the day this Act comes into force, chairman of a board of commissioners of police that is continued as a police services board shall be deemed to have been designated as its chair.

Protection from personal liability

29.—(1) No action or other proceeding for damages shall be instituted against a member of a board for any act done in good faith in the execution or intended execution of his or her duty or for any alleged neglect or default in the execution in good faith of that duty.

Board's liability

(2) Subsection (1) does not relieve a board of liability for a member's acts or omissions, and the board is liable as if that subsection had not been enacted and as if the member were the board's employee.

Board may contract, sue and be sued

30.—(1) A board may contract, sue and be sued in its own name.

Members not liable for board's contracts

(2) The members of a board are not personally liable for the board's contracts.

Responsibilities of boards

31.—(1) A board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

(a) appoint the members of the municipal police force;

(b) generally determine objectives and priorities with respect to police services in the municipality;

(c) establish policies for the effective management of the police force;

(d) recruit and appoint the chief of police and any deputy chief of police, and determine their remuneration and working conditions, taking their submissions into account;

(e) direct the chief of police and monitor his or her performance;

(f) establish an employment equity plan in accordance with section 48 and the regulations, review its implementation by the chief of police and receive regular reports from him or her on that subject;

(g) receive regular reports from the chief of police on disclosures and decisions made under section 46 (secondary activities);

(h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;

(i) establish guidelines for the administration by the chief of police of the public complaints system under Part VI;

(j) review the administration by the chief of police of the public complaints system and receive regular reports from him or her on that subject.

Members of police force under board's jurisdiction

(2) The members of the police force, whether they were appointed by the board or not, are under the board's jurisdiction.

Restriction

(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force.

Training of board members

(4) The board shall ensure that its members undergo any training that the Solicitor General may provide or require.

Rules re management of police force

(5) The board may, by by-law, make rules for the effective management of the police force.

Guidelines re secondary activities

(6) The board may establish guidelines consistent with section 46 for police officers' disclosure of secondary activities to the chief of police and for the decisions of the chief of police under subsection 46 (4).

Oath of office

32. Before entering on the duties of office, a member of a board shall take an oath or affirmation of office in the prescribed form.

Agreement to constitute joint board

33.—(1) Despite any special Act, two or more municipalities whose combined population according to the last enumer-

R.S.O. 1980, c. 31

ation taken under section 14 of the *Assessment Act* exceeds 5,000 may enter into an agreement to constitute a joint board.

Idem

(2) The agreement must be authorized by by-laws of the councils of the participating municipalities and requires the consent of their boards.

Composition of board

(3) The joint board shall consist of,

(a) the heads of the councils of the participating municipalities; and

(b) other members appointed by the Lieutenant Governor in Council.

Application of Act to joint boards

(4) The provisions of this Act that apply to boards also apply with necessary modifications to joint boards.

Delegation

34. A board may delegate to two or more of its members any authority conferred on it by this Act, except,

(a) the authority to hear the appeals of police officers found guilty of misconduct under Part V, which must be exercised by a quorum; and

(b) the authority to bargain under Part VIII, which the board may delegate to one or more members.

Meetings

35.—(1) The board shall hold at least four meetings each year.

Quorum

(2) A majority of the members of the board constitutes a quorum.

Meetings open to public

(3) The meetings of the board shall be open to the public unless the board directs otherwise, and notice of meetings that are open to the public shall be published in the manner that the board determines.

Exception

(4) The board may direct that a meeting be closed to the public if it is of the opinion that,

(a) matters involving public security may be disclosed at the meeting and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed at the meeting of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public.

Admissibility of documents

36. A document purporting to be a by-law of the board signed by a member or purporting to be a copy of such a by-law certified correct by a member is admissible in evidence without proof of the signature or authority of the person signing.

Power to summon witnesses

37. A board has the same power to summon witnesses, enforce their attendance, examine them on oath and compel them to give evidence, in connection with the board's functions, as a court of law has in civil cases.

Municipal police force

38. A municipal police force shall consist of a chief of police and such other police officers and civilian employees as the board considers adequate, and shall be provided with the equipment and facilities that the board considers adequate.

Estimates

39.—(1) On or before the 1st day of March in each year, the board shall submit to the municipal council or to each council responsible for maintaining the police force, as the case may be, its estimates for the year.

Idem

(2) The estimates shall show, separately, the amounts that will be required,

(a) to maintain the police force and provide it with equipment and facilities; and

(b) to pay the expenses of the board's operation other than the remuneration of board members.

Commission hearing in case of disagreement

(3) If the council does not approve the board's estimates or disagrees with the board on the number of members of the police force that is adequate or the equipment and facilities that are adequate, the Commission shall determine the question after a hearing.

Reduction or abolition of police force

40. A board may terminate the employment of a member of the police force for the purpose of abolishing the police force or reducing its size if the Commission consents and if the abolition or reduction does not contravene this Act.

PART IV

POLICE OFFICERS AND OTHER POLICE STAFF

CHIEF OF POLICE

Duties of chief of police

41.—(1) The duties of a chief of police include,

(a) in the case of a municipal police force, administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31 (1);

(b) ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force;

(c) ensuring that the police force provides community-oriented police services;

(d) administering discipline in accordance with Part V;

(e) administering the public complaints system under Part VI;

(f) implementing the employment equity plan established under section 48 and the regulations;

(g) in the case of a municipal police force, reporting to the board at regular intervals on public complaints and on the implementation of the employment equity plan.

Chief of police reports to board

(2) The chief of police reports to the board and shall obey its lawful orders and directions.

POLICE OFFICERS

Duties of police officer

42.—(1) The duties of a police officer include,

(a) preserving the peace;

(b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;

(c) assisting victims of crime;

(d) apprehending criminals and other offenders and others who may lawfully be taken into custody;

(e) laying charges and participating in prosecutions;

(f) executing warrants that are to be executed by police officers and performing related duties;

(g) performing the lawful duties that the chief of police assigns;

(h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;

(i) completing the prescribed training.

Power to act throughout Ontario

(2) A police officer has authority to act as such throughout Ontario.

Powers and duties of common law constable

(3) A police officer has the powers and duties ascribed to a constable at common law.

Criteria for hiring

43.—(1) No person shall be appointed as a police officer unless he or she,

(a) is a Canadian citizen or a permanent resident of Canada;

(b) is at least eighteen years of age;

(c) is physically and mentally able to perform the duties of the position, having regard to his or her own safety and the safety of members of the public;

(d) is of good moral character and habits; and

(e) has successfully completed at least four years of secondary school education or its equivalent.

Idem

(2) A candidate for appointment as a police officer shall provide any relevant information or material that is lawfully requested in connection with his or her application.

Probationary period

44.—(1) A municipal police officer's probationary period begins on the day he or she is appointed and ends on the later of,

(a) the first anniversary of the day of appointment;

(b) the first anniversary of the day the police officer successfully completes an initial period of training at the Ontario Police College.

Termination of employment during probationary period

(2) A board may terminate a police officer's employment at any time during his or her probationary period but, before doing so, shall give the police officer reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing, as the board may determine.

Oaths of office and secrecy

45. A person appointed to be a police officer shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

Restrictions on secondary activities

46.—(1) A police officer shall not engage in any activity,

(a) that interferes with or influences adversely the performance of his or her duties as a police officer, or is likely to do so;

(b) that places him or her in a position of conflict of interest, or is likely to do so;

(c) that would otherwise constitute full-time employment for another person; or

(d) in which he or she has an advantage derived from employment as a police officer.

Exception: paid duty

(2) Clause (1) (d) does not prohibit a police officer from performing, in a private capacity, services that have been arranged through the police force.

Disclosure to chief of police

(3) A police officer who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police.

Decision of chief of police

(4) The chief of police shall decide whether the police officer is permitted to engage in the activity, and the police officer shall comply with that decision.

Accommodation of disabled police officer's needs

1981, c. 53

47.—(1) Subject to subsection (2), if a municipal police officer becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the board shall accommodate his or her needs in accordance with the *Human Rights Code, 1981*.

Undue hardship

(2) If the police officer's needs cannot be accommodated without undue hardship on the board, it may discharge the police officer, or retire the police officer if entitled to retire, after holding a hearing and receiving the evidence of two legally qualified medical practitioners respecting the police officer's incapacity.

Idem, O.P.P.

(3) Subject to subsection (4), if a member of the Ontario Provincial Police becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the Commissioner shall accommodate the member's needs in accordance with the *Human Rights Code, 1981*. 1981, c. 53

Idem

(4) If the member's needs cannot be accommodated without undue hardship on the Crown in right of Ontario, he or she may be discharged, or retired if entitled to retire, after the Commissioner has held a hearing and received the evidence of two legally qualified medical practitioners respecting the member's incapacity.

MEMBERS OF POLICE FORCES

Employment equity plans

48.—(1) Every police force shall have an employment equity plan prepared in accordance with this section and the regulations.

Contents of plan

(2) An employment equity plan shall provide for,

(a) the elimination of systemic barriers to the recruitment and promotion of persons who are members of prescribed groups;

(b) the implementation of positive measures with respect to the recruitment and promotion of those persons, so as to make the police force more representative of the community or communities it serves; and

(c) specific goals and timetables with respect to the elimination of systemic barriers, the implementation of positive measures and the composition of the police force.

Board to prepare plan for municipal police force

(3) In the case of a municipal police force, the board shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Commissioner to prepare plan for O.P.P.

(4) In the case of the Ontario Provincial Police, the Commissioner shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Solicitor General

(5) Before approving the employment equity plan, the Solicitor General may require that changes be made to it.

Political activity

49. No member of a municipal police force shall engage in political activity, except as the regulations permit.

Liability for torts

50.—(1) The board or the Crown in right of Ontario, as the case may be, is liable in respect of torts committed by members of the police force in the course of their employment.

Indemnification of member of municipal police force

(2) The board may, in accordance with the guidelines established under clause 31 (1) (h), indemnify a member of the police force for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of a proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.

Council responsible for board's liabilities

(3) The council is responsible for the liabilities incurred by the board under subsections (1) and (2).

Indemnification of member of O.P.P.

(4) The Treasurer of Ontario may indemnify, out of the Consolidated Revenue Fund, a member of the Ontario Provincial Police for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of a proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.

Police cadets

51.—(1) With the board's approval, a municipal chief of police may appoint persons as police cadets to undergo training.

Idem

(2) A police cadet is a member of the municipal police force.

52.—(1) With the Commission's approval, a board may appoint auxiliary members of the police force. Auxiliary members of municipal police force

(2) If the board suspends or terminates the appointment of an auxiliary member of the police force, it shall promptly give the Commission written notice of the suspension or termination. Notice of suspension or termination

(3) The Lieutenant Governor in Council may appoint auxiliary members of the Ontario Provincial Police. Auxiliary members of O.P.P.

(4) An auxiliary member of a police force has the authority of a police officer if he or she is accompanied or supervised by a police officer and is authorized to perform police duties by the chief of police. Authority of auxiliary members of police force

(5) A person appointed to be an auxiliary member of a police force shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form. Oaths of office and secrecy

SPECIAL CONSTABLES

53.—(1) With the Commission's approval, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient. Special constables appointed by board

(2) With the Commission's approval, the Commissioner may appoint a special constable to act for the period, area and purpose that the Commissioner considers expedient. Special constables appointed by Commissioner

(3) The appointment of a special constable may confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment. Powers of police officer

(4) The power to appoint a special constable includes the power to suspend or terminate the appointment but, if a board or the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission. Suspension or termination of appointment

(5) The Commission also has power to suspend or terminate the appointment of a special constable. Commission

(6) Before a special constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the board, Commissioner or Commission, as the case may be, may determine. Information and opportunity to reply

Oaths of office and secrecy

(7) A person appointed to be a special constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

FIRST NATIONS CONSTABLES

First Nations Constables

R.S.C. 1985,c.I-5

54.—(1) With the Commission's approval and with the approval of the police governing authority or band council of a reserve as defined in the *Indian Act* (Canada), the Commissioner may appoint a First Nations Constable to perform specified duties in connection with the reserve.

Powers of police officer

(2) The appointment of a First Nations Constable may confer on him or her the powers of a police officer to the extent and for the specific purpose set out in the appointment.

Suspension or termination of appointment

(3) The power to appoint a First Nations Constable includes the power to suspend or terminate the appointment but, if the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission.

Commission

(4) The Commission also has power to suspend or terminate the appointment of a First Nations Constable.

Information and opportunity to reply

(5) Before a First Nations Constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the Commissioner or Commission, as the case may be, may determine.

Oaths of office and secrecy

(6) A person appointed to be a First Nations Constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

EMERGENCIES

Emergencies

55.—(1) In an emergency, the Solicitor General may make an agreement with the Crown in right of Canada or of another province or with any of its agencies for the provision of police services.

Authority to act as police officers

(2) The agreement authorizes all peace officers to whom it relates to act as police officers in the area to which the agreement relates.

Application of R.S.O. 1980, c. 539

(3) For the purpose of the *Workers' Compensation Act*, the relationship between a member of a police force and the body

that employs him or her continues as if an agreement had not been made under this section.

Expense of calling out Canadian Forces

(4) If the services of the Canadian Forces are provided under this section, the municipality in whose territory the services are required shall pay all the related expenses.

Resignation during emergency prohibited

R.S.C. 1985, c. N-5

(5) Subject to sections 33 and 34 of the *National Defence Act* (Canada), while an agreement made under this section is in force, no member of a police force that has jurisdiction in the area to which the agreement relates shall resign without the consent of the chief of police.

PART V

Disciplinary Proceedings

Misconduct

56. A police officer is guilty of misconduct if he or she,

(a) commits an offence described in a prescribed code of conduct;

(b) engages in an activity that contravenes subsection 46 (1) (secondary activities) without the permission of his or her chief of police, being aware that the activity may contravene that subsection;

(c) contravenes section 49 (political activity);

(d) contravenes subsection 55 (5) (resignation during emergency);

(e) contravenes section 57 (inducing misconduct, withholding services);

(f) contravenes subsection 95 (4) (photography at hearing);

(g) contravenes subsection 99 (6) (obstructing Police Complaints Commissioner);

(h) contravenes subsection 107 (1) (confidentiality);

(i) contravenes section 116 (trade union membership);

(j) deals with personal property, other than money or a firearm, in a manner that is not consistent with section 130;

(k) deals with money in a manner that is not consistent with section 131;

(l) deals with a firearm in a manner that is not consistent with section 132;

(m) contravenes a regulation made under paragraph 15 (equipment), 16 (use of force), 17 (standards of dress, police uniforms) 20 (police pursuits) or 21 (records) of subsection 133 (1).

Inducing misconduct

57.—(1) No person, including a member of a police force, shall,

(a) induce or attempt to induce a member of a police force to withhold his or her services; or

(b) induce or attempt to induce a police officer to commit misconduct.

Withholding services

(2) No member of a police force shall withhold his or her services.

Offence

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Consent of Solicitor General

(4) No prosecution shall be instituted under this section without the consent of the Solicitor General.

Chief to investigate misconduct

58.—(1) Any apparent or alleged misconduct by a police officer shall be investigated by his or her chief of police.

Idem

(2) The chief of police may investigate the matter by means of a hearing under section 60 or may investigate it without holding a hearing.

Effect of complaint

(3) When a complaint is made under Part VI with respect to apparent or alleged misconduct by a police officer, the following rules apply:

1. The complaint shall be dealt with in accordance with Part VI, and recourse shall be had to this Part only as Part VI permits.

2. Any investigation of the matter under this Part, including a hearing under section 60, is suspended as soon as the chief of police becomes aware that a complaint has been made.

Procedure if no hearing held

59.—(1) If the chief of police investigates apparent or alleged misconduct without holding a hearing and concludes that the police officer is guilty of misconduct, the following rules apply:

1. The chief of police shall provide the police officer with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

2. The chief of police may then admonish the police officer and may cause particulars of the matter, of the action taken and of the police officer's reply to be recorded in his or her employment record.

3. If the police officer refuses to accept the admonition, the chief of police shall not cause particulars to be recorded without first holding a hearing.

Expungement

(2) Particulars entered in the police officer's employment record under paragraph 2 of subsection (1) shall be expunged from the record two years after being entered if during that time no other entries concerning misconduct have been made in the record under this Part or Part VI.

Hearing

60.—(1) A chief of police may hold a hearing to determine whether a police officer belonging to his or her police force is guilty of misconduct.

Who may be prosecutor

(2) The prosecutor at the hearing shall be a police officer of the rank of sergeant or higher, or if there is none of that rank, a police officer of a rank equal to or higher than that of the police officer who is the subject of the hearing.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Examination of evidence

(4) Before the hearing, the police officer shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence.

Idem

(5) If the hearing is being conducted as a result of a complaint made under Part VI, the complainant shall likewise be given an opportunity to examine evidence and reports before the hearing.

Police officer not required to give evidence
R.S.O. 1980, c. 484

(6) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(7) In the case of a hearing that is being conducted as a result of a complaint made under Part VI, no statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Release of exhibits

(8) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

Stay

(9) If the police officer is charged with an offence under a law of Canada or of a province, the hearing shall continue unless the chief of police, after consulting with the Crown Attorney, is of the opinion that it should be stayed until the conclusion of the court proceedings.

Six-month limitation period

(10) If six months have elapsed since the facts on which an allegation of misconduct is based first came to the attention of the chief of police, no notice of hearing shall be served without leave of the board.

Penalties

61.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may,

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days;

(e) direct that the police officer forfeit not more than five days' pay; or

(f) direct that the police officer forfeit not more than twenty days off.

Idem

(2) Instead of or in addition to a penalty described in subsection (1), the chief of police may reprimand the police officer.

Dismissal and demotion

(3) The chief of police shall not impose the penalties of dismissal or demotion unless the notice of hearing or a subsequent notice served on the police officer indicated that they might be imposed if the misconduct were proved on clear and convincing evidence.

Notice of decision

(4) The chief of police shall promptly give written notice of the decision, with reasons, to the police officer and, in the case of a municipal police force, to the board.

Idem

(5) If the hearing was conducted as a result of a complaint made under Part VI, the chief of police shall also give notice of the decision, with reasons, to the complainant and to the Police Complaints Commissioner.

Police officer's employment record

(6) Unless misconduct is proved on clear and convincing evidence, no reference to the allegations or the hearing shall be placed in the police officer's employment record and the matter shall not be taken into account for any purpose related to his or her employment.

Misconduct by municipal chief of police

62.—(1) A board may hold a hearing to determine whether the chief of police is guilty of misconduct, and this Part applies with necessary modifications.

Commission hearing

(2) The chief of police may, by serving a notice to that effect on the board and the Commission, require that the Commission hold the hearing instead of the board.

Appeal to board

63.—(1) A municipal police officer on whom a penalty is imposed under section 61 may appeal to the board by serving a notice of appeal on the board and the chief of police within fifteen days of receiving notice of the decision.

Hearing

(2) The board shall hear the appeal on the record, but may receive additional evidence as it considers just.

Powers of board

(3) The board may confirm, alter or revoke the decision or may require the chief of police to rehear the matter.

Board's decision

(4) The board shall promptly give written notice of its decision, with reasons, to the chief of police and the police officer.

Participation of members

(5) No member of the board shall participate in the decision unless he or she was present throughout the hearing of the appeal and, except with the police officer's consent, no

decision of the board shall be given unless all members who were present throughout the hearing participate in the decision.

Further appeal to Commission

(6) The police officer may appeal to the Commission from the board's decision by serving a notice of appeal on the Commission, the board and the chief of police within thirty days of receiving notice of the decision.

O.P.P.: appeal to Commission from Commissioner's decision

64. A member of the Ontario Provincial Police on whom a penalty is imposed under section 61 may appeal to the Commission by serving a written notice on the Commission and the Commissioner within thirty days of receiving notice of the decision.

Exception in case of public complaint

65. If the hearing was conducted as a result of a complaint made under Part VI, sections 63 and 64 do not apply and the police officer may only appeal in accordance with that Part.

Appeals to Commission

66. Subsections 63 (2) to (5) apply to appeals heard by the Commission as if references to the board were references to the Commission and, in the case of an appeal from a board's decision, as if references to the chief of police were references to the board.

Extension of time for appeals

67. The board or Commission may grant an extension of the time provided for giving it a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Delegation

68. A chief of police may authorize any member of the police force to exercise any power or perform any duty of the chief of police referred to in this Part, subject to the following rules:

1. A hearing under section 60 shall be conducted by a police officer of the rank of inspector or higher, or if there is none of that rank, by a police officer of a rank higher than that of the police officer who is the subject of the hearing.

2. A police officer from another police force who meets the requirements of paragraph 1 may conduct the hearing, with the approval of his or her chief of police.

3. The measures referred to in subsection 59 (1) (procedure if no hearing is held) shall be taken by a police officer of the rank of inspector or higher.

Notice

69.—(1) A notice required to be given under this Part is sufficiently given if delivered personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Suspension

70.—(1) If a police officer is suspected of or charged with an offence under a law of Canada or of a province or is suspected of misconduct, the chief of police may suspend him or her from duty with pay.

Revocation and reimposition of suspension

(2) The chief of police may revoke the suspension and later reimpose it, repeatedly if necessary, as he or she considers appropriate.

Duration of suspension

(3) Unless the chief of police revokes the suspension, it shall continue until the final disposition of the proceeding in which the police officer's conduct is at issue.

Conditions of suspension

(4) While suspended, the police officer shall not exercise any of the powers vested in him or her as a police officer or wear or use clothing or equipment that was issued to him or her in that capacity.

Suspension without pay

(5) If a police officer is convicted of an offence and sentenced to a term of imprisonment, the chief of police may suspend him or her without pay, even if the conviction or sentence is under appeal.

Other employment during period of suspension

71.—(1) A police officer who is suspended under section 70 or under clause 61 (1) (d) or 96 (1) (d) (penalties) may engage in other employment during the period of suspension, and sections 46 (secondary activities) and 116 (trade union membership prohibited) do not apply.

Earnings from other employment

(2) If the police officer is suspended with pay, the pay for the period of suspension shall be reduced by the amount that he or she earns from other employment during that period.

PART VI

PUBLIC COMPLAINTS

Definitions

72.—(1) In this Part,

"bureau" means the public complaints investigation bureau of a police force;

"Commissioner" means the Police Complaints Commissioner appointed under section 98.

Police officer

(2) In this Part, unless the context indicates otherwise, a reference to a police officer is a reference to the police officer who is the subject of a complaint.

Attorney General

73. This Part shall be administered by the Attorney General.

Application of Part

74. Complaints by members of the public about the conduct of police officers shall be dealt with in accordance with this Part.

Bureau

75.—(1) Every chief of police shall establish and maintain a public complaints investigation bureau.

Staff

(2) The chief of police shall ensure that the bureau is supplied with sufficient staff to perform its duties effectively.

Small police forces

(3) If the police force has fewer than twenty police officers, the bureau of another police force may, under an agreement made in accordance with section 7 (municipal agreements for sharing police services) or 10 (municipal agreements for provision of police services by O.P.P.), act as the first-named police force's bureau as well; in that case, subsections (1) and (2) do not apply.

INITIAL HANDLING OF COMPLAINT

Complaint by member of public

76.—(1) A member of the public may make a complaint about the conduct of a police officer, orally or in writing,

(a) at the bureau of the police force to which the complaint relates, or at a station or detachment of that police force; or

(b) at an office of the Commissioner; or

(c) at any bureau, police station or detachment.

Recording of complaint

(2) The person who receives the complaint shall record it on a form provided by the Commissioner and shall give the person who makes a complaint a copy of the complaint as recorded.

Information

(3) The person who makes the complaint shall also be given a statement, in a form provided by the Commissioner, that sets out the procedures followed in dealing with a complaint and describes the rights of a complainant.

Preservation of evidence

(4) The person on duty who is in charge of a place when a complaint is received there shall,

(a) take all reasonable steps to ensure that evidence that might otherwise be lost is secured immediately; and

(b) ensure that a report on the evidence is forthwith prepared and attached to the complaint.

Copies of complaint

(5) The person who records the complaint shall forthwith send copies of it,

(a) to the bureau, the chief of police and the Commissioner, in the case of a complaint made at a station or detachment of the police force to which it relates;

(b) to the chief of police and the Commissioner, in the case of a complaint made at the bureau of the police force to which it relates;

(c) to the bureau and the chief of police of the police force to which it relates, in the case of a complaint made at an office of the Commissioner;

(d) to the Commissioner, in the case of a complaint made at a bureau, station or detachment of a different police force than the one to which it relates.

Complaint made to another police force

(6) If a complaint was made at a bureau, station or detachment of a different police force than the one to which it relates, the Commissioner shall forthwith send copies of the complaint and of any report prepared under subsection (4) to the appropriate bureau.

Complaint made more than six months after incident

(7) A complaint that is made more than six months after the incident to which it relates shall be further dealt with under this Part only if the Commissioner so directs.

Complaint by Commissioner

77.—(1) In exceptional circumstances, the Attorney General may direct the Commissioner to make a complaint about the conduct of a police officer.

Recording of complaint, copies

(2) The Commissioner shall cause the complaint to be recorded and shall send copies to the bureau and the chief of police of the force to which it relates.

Complainant

(3) The Commissioner is the complainant in the case of a complaint made under this section.

Non-application of certain provisions

(4) Subsection 76 (7) and sections 79 (notice to potential complainant), 80 (classification of complaint), 81 (reclassification), 82 (informal resolution) and 84 (decision by chief of police re no further action) do not apply to complaints made under this section.

Notice to police officer

78.—(1) When the bureau receives a complaint, the person in charge shall forthwith give the police officer notice of the substance of the complaint, unless in the person's opinion to do so might prejudice the investigation.

Form

(2) The notice shall be written on a form provided by the Commissioner.

Notice to potential complainant

79.—(1) If the complaint is made by a person who was not directly affected by the incident and did not observe it, the Commissioner shall, as soon as possible after receiving the complaint, attempt to find the person who was directly affected by the incident or who observed it and send him or her a notice.

Idem

(2) The notice shall indicate that a complaint has been made, that the person is entitled to be the complainant in the matter and that the complaint will not be dealt with further unless he or she is the complainant.

Idem

(3) The notice shall also include information about the procedures followed in dealing with a complaint and the rights of a complainant.

No further action

(4) The complaint shall not be further dealt with under this Part if,

(a) no person who was directly affected by the incident or who observed it can be found; or

(b) the person to whom the Commissioner sends the notice does not, within thirty days of the date on which it is sent, file with the Commissioner a request to be the complainant in the matter.

Disciplinary proceeding

(5) However, if a disciplinary proceeding is commenced against the police officer in respect of the complaint, the chief

of police shall notify the Commissioner of the proceeding and of its result, and the Commissioner shall then notify the person who made the complaint.

Reopening of matter

(6) If the person to whom the Commissioner sends the notice files a request to be the complainant in the matter after the thirty-day period referred to in subsection (4), the Commissioner may cause the matter to be reopened despite the late filing if he or she considers it advisable to do so.

Classification of complaint

80.—(1) When the bureau receives a complaint, the person in charge shall consider whether it relates to possible misconduct under section 56, to other matters or to both.

Idem

(2) If the person in charge is of the opinion that all or part of the complaint relates only to other matters than possible misconduct, he or she may, with the Commissioner's consent, classify the complaint or part as an inquiry.

Notice and investigation

(3) When all or part of a complaint has been classified as an inquiry, the person in charge shall forthwith notify the complainant and the police officer of the fact and may cause the inquiry to be investigated.

Response to complainant

(4) Not more than sixty days after the bureau receives the original complaint, the person in charge shall send the complainant a written response to the inquiry and shall also send the Commissioner a copy of the response, together with a summary of the results of any investigation.

Effect

(5) A complaint or part of a complaint that is classified as an inquiry and not reclassified as a complaint and that is the subject of a response under this section need not be dealt with further under this Part.

Reclassification

81.—(1) During the course of the investigation of an inquiry, if the person in charge concludes that all or part of it relates to possible misconduct, he or she may reclassify the inquiry or part as a complaint.

Idem

(2) After receiving a summary of the results of the investigation of an inquiry, the Commissioner may direct the person in charge to reclassify all or part of it as a complaint.

Notice

(3) The person in charge shall forthwith notify the complainant and the police officer of the reclassification, and shall also notify the Commissioner in the case of a reclassification under subsection (1).

Effect

(4) An inquiry or part of an inquiry that is reclassified as a complaint shall be dealt with as such under this Part.

INFORMAL RESOLUTION, WITHDRAWAL

Informal resolution by person in charge of bureau

82.—(1) If the complainant and the police officer consent, the complaint may be resolved informally by the person in charge of the bureau, before the chief of police gives notice of a decision under section 89, or by the Commissioner after that time.

Board's consent

(2) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, its consent is also required for an informal resolution.

Record

(3) When a complaint is resolved informally, the resolution shall be recorded on a form provided by the Commissioner and signed by the complainant and police officer.

Copies

(4) Copies of the record shall be provided to the complainant and the police officer, and to the Commissioner if the complaint was resolved by the person in charge of the bureau.

Commissioner's decision that complaint to continue

(5) If the Commissioner is of the opinion that the informal resolution is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the informal resolution.

Notice

(6) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

Withdrawal of complaint

83.—(1) The complainant may withdraw the complaint by giving a notice of withdrawal to the person in charge of the bureau, before the chief of police gives notice of a decision under section 89, or to the Commissioner after that time.

Idem, complaint made by Commissioner

(2) If the complaint was made under section 77, the Commissioner may withdraw it by giving a notice of withdrawal to the chief of police and a copy to the police officer; subsection (3) applies to the withdrawal but subsections (4) to (7) do not.

Board's consent

(3) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, it shall not be withdrawn without the board's consent.

Copies

(4) A copy of the notice of withdrawal shall be provided to the police officer, and to the Commissioner if the person in charge of the bureau received the notice.

(5) The notice of withdrawal shall be written on a form provided by the Commissioner. Form

(6) If the Commissioner is of the opinion that the withdrawal is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the withdrawal. Commissioner's decision that complaint to continue

(7) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau. Notice

POWERS OF CHIEF OF POLICE

84.—(1) At any time before making a decision under section 89, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith. Decision re no further action

(2) The chief of police shall give the Commissioner, the complainant and the police officer notice of the decision. Notice

85.—(1) The chief of police may commence or continue a disciplinary proceeding against a police officer under Part V even if, Power to commence or continue disciplinary proceeding

(a) the complaint is withdrawn or is resolved informally; or

(b) the complaint is not to be further dealt with under this Part because of subsection 76 (7) (complaint filed more than six months after incident) or section 79 (complaint made by person not directly affected), or because of a decision by the chief of police under section 84.

(2) The chief of police shall give the Commissioner and the complainant notice of a decision to commence or continue a disciplinary proceeding in the circumstances described in subsection (1), and shall also give them notice of the results of the proceeding. Notice to Commissioner and complainant

INVESTIGATION OF COMPLAINT

86.—(1) The person in charge of the bureau shall cause an investigation to be conducted into the complaint in accordance with the prescribed procedures. Investigation

Interim reports

(2) During the course of the investigation, the person in charge shall send the Commissioner, the complainant and the police officer interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the bureau receives the complaint.

Exception

(4) If there are no new matters to report, the person in charge may send the Commissioner, the complainant and the police officer a notice to that effect instead of an interim report.

Idem

(5) The person in charge may withhold an interim report from the complainant or the police officer if, in his or her opinion, it is desirable to do so in order to avoid prejudicing the investigation, but in that case shall forthwith notify the Commissioner of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the person in charge shall cause a final report to be prepared and shall send copies of it to the Commissioner, the chief of police, the complainant and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the complainant, the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

Further investigation

(8) After receiving a final report, the Commissioner may require the chief of police to have the complaint investigated further.

Idem

(9) A summary of the results of any further investigation shall be sent to the persons who received the final report.

Forms

(10) The interim reports and final report shall be written on forms provided by the Commissioner.

Investigation by Commissioner

87.—(1) The Commissioner may conduct the investigation into the complaint, instead of the bureau,

(a) for any reason, after receiving the first interim report or after the thirty-day period referred to in subsection 86 (3) has expired;

(b) if he or she has reasonable grounds to believe that undue delay or other unusual circumstances have affected the bureau's investigation or the preparation of its final report; or

(c) if the chief of police requests that the Commissioner conduct the investigation.

Effect of court proceeding commenced by complainant

(2) The chief of police shall request that the Commissioner conduct the investigation into a complaint if the chief of police becomes aware that the complainant has commenced a court proceeding against the police officer, the police force or the chief of police, the police services board or the municipality (in the case of a municipal police force) or the Crown in right of Ontario (in the case of the Ontario Provincial Police) in connection with the incident to which the complaint relates.

Complaints concerning more than one police force

(3) If the complaint concerns more than one police force, the Commissioner shall conduct the investigation.

Notice

(4) When the Commissioner decides to conduct the investigation, he or she shall forthwith notify the chief of police, giving reasons in the case of a decision under clause (1) (a) or (b).

Effect on bureau

(5) When the Commissioner notifies the chief of police of a decision to conduct the investigation, the person in charge of the bureau shall forthwith end any investigation begun by the bureau and send to the Commissioner the evidence that has been gathered and the documents relating to the complaint.

Manner of conducting investigation

(6) Section 86 applies to the Commissioner's investigation, with necessary modifications, except that the Commissioner shall send the first interim report not more than thirty days after giving notice of the decision to conduct the investigation.

Investigation of complaint made by Commissioner

88.—(1) If the complaint was made under section 77, the Commissioner shall conduct the investigation in accordance with the prescribed procedures, and section 86 does not apply.

Interim reports

(2) The Commissioner shall send the police officer and the chief of police interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the Commissioner makes the complaint.

Exception

(4) If there are no new matters to report, the Commissioner may send the police officer and the chief of police a notice to that effect instead of an interim report.

Idem

(5) The Commissioner may withhold an interim report from the police officer if, in his or her opinion, it is desirable to do so to avoid prejudicing the investigation, but in that case shall forthwith notify the chief of police of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the Commissioner shall cause a final report to be prepared and shall send copies of it to the chief of police and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

DECISION BY CHIEF OF POLICE

Review of final report

89.—(1) The chief of police shall review the final report of the investigation of a complaint and may order further investigation if he or she considers it advisable.

Results of further investigation

(2) A summary of the results of any further investigation shall be sent to the persons who received the final report and to the Commissioner if he or she conducted the original investigation.

Decision

(3) After reviewing the final report and the results of any further investigation, the chief of police shall,

(a) decide that no further action is necessary;

(b) admonish the police officer regarding the matter in accordance with subsection 59 (1);

(c) hold a disciplinary hearing under section 60;

(d) order that all or part of the complaint be the subject of a hearing by a board of inquiry; or

(e) cause an information to be laid against the police officer and refer the matter to the Crown Attorney for prosecution.

Idem

(4) If the chief of police decides to hold a disciplinary hearing under section 60 or orders a hearing by a board of inquiry, he or she may at the same time cause an information to be laid against the police officer.

Notice

(5) The chief of police shall give written notice of the decision to the Commissioner, the complainant and the police officer, with reasons in the case of a decision, that no further action is necessary or a decision to admonish the police officer.

Six-month time limit

(6) The chief of police shall give notice of the decision within six months of receiving the final report, unless the Commissioner grants an extension.

Deemed decision

(7) If the chief of police does not give notice of the decision within the six-month period and is not granted an extension, he or she shall be deemed to have decided that no further action is necessary.

REVIEW BY COMMISSIONER

Review by Commissioner

90.—(1) The Commissioner shall review the decision of the chief of police,

(a) at the complainant's or police officer's request, in the case of a decision under section 89 to admonish the police officer;

(b) at the complainant's request, in the case of a decision under section 89 that no further action is necessary;

(c) at the complainant's request, in the case of a decision under section 84 that the complaint or part of it not be further dealt with under this Part.

Idem

(2) The Commissioner shall, at the complainant's request, review the decision made in a disciplinary hearing under section 60 arising out of a complaint.

Thirty-day limit

(3) The complainant or police officer may request a review by the Commissioner only within thirty days of receiving

notice of the decision, unless the Commissioner grants an extension.

Complaint made by Commissioner

(4) In the case of a complaint made under section 77, the Commissioner may review,

(a) a decision by the chief of police to admonish the police officer;

(b) a decision by the chief of police that no further action is necessary;

(c) the decision made in a disciplinary hearing under section 60 arising out of the complaint.

Commissioner's decision

(5) After conducting the review, the Commissioner may decide to take no further action, or may order a hearing by a board of inquiry if he or she believes it to be necessary in the public interest.

Notice

(6) The Commissioner shall forthwith give written notice of his or her decision, with reasons in the case of a decision to take no further action, to the chief of police, the complainant and the police officer.

Idem

(7) If the Commissioner orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 102 (9).

HEARING BY BOARD OF INQUIRY

Police officer's appeal to board

91.—(1) If a penalty is imposed on a police officer after a disciplinary hearing under section 60 that was conducted as a result of the complaint, he or she may appeal to a board of inquiry by serving a notice of appeal on the Commissioner, the chair of the panel and the chief of police within fifteen days of receiving notice of the decision.

Notice to complainant

(2) The Commissioner shall forthwith notify the complainant of the appeal.

Extension of time for appeal

(3) A member of the panel who was appointed on a recommendation made under subsection 102 (2) may grant an extension of the time provided for serving a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Appeal to be combined with other hearing

(4) The hearing of the police officer's appeal and any hearing ordered by the Commissioner under section 90 shall be combined.

Constitution of board

92.—(1) A board of inquiry shall be constituted,

(a) when the chief of police orders under section 89 that a matter be heard by a board of inquiry;

(b) when the Commissioner orders a hearing under section 90; and

(c) when a police officer appeals under section 91.

Assignment of members to board

(2) The chair of the panel shall assign the following members of the panel to the board of inquiry, choosing members from the area where the complaint arose if possible:

(a) as presiding officer, a member who was appointed on a recommendation made under subsection 102 (2);

(b) a member who was appointed on a recommendation made under subsection 102 (3); and

(c) a member who was appointed on a recommendation made under subsection 103 (4).

New hearing, exception

93.—(1) The hearing before the board of inquiry shall be a new hearing, unless it follows a disciplinary hearing under section 60; in that case it shall be on the record, but the board may receive additional evidence as it considers just.

Record of disciplinary hearing

(2) If a board is constituted following a disciplinary hearing, the chief of police shall cause a record of the hearing to be prepared, at the Commissioner's expense if the Commissioner ordered the hearing before the board.

Idem

(3) The record shall include a transcript and shall be accompanied by the documents, physical evidence and exhibits considered at the disciplinary hearing.

Parties

94.—(1) The parties to a hearing are,

(a) the complainant;

(b) the police officer;

(c) the Commissioner; and

(d) the chief of police, in the case of an appeal by the police officer.

Idem

(2) The board of inquiry may add parties at any stage of the hearing on the conditions it considers proper.

Carriage

(3) In the case of a hearing ordered by the chief of police or by the Commissioner, the Commissioner has carriage of the matter and, in the case of an appeal by the police officer, the police officer has carriage.

Statement of alleged misconduct

(4) In the case of a hearing ordered by the chief of police or by the Commissioner, the chief of police or the Commissioner, as the case may be, shall provide the parties with a concise statement of the allegations of misconduct to be heard.

Notice of hearing

95.—(1) The board of inquiry shall appoint a time for the hearing and notify the parties.

Examination of evidence

(2) Before the hearing, the police officer and the complainant shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence at the hearing.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Application of 1984, c. 11, s. 146

(4) Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to the hearing.

Police officer not required to give evidence

R.S.O. 1980, c. 484

(5) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(6) No statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Board not to communicate in relation to subject-matter of hearing

(7) The board of inquiry shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or party's counsel or representative, unless all parties receive notice and have an opportunity to participate.

Exception

(8) However, the board may seek legal advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to the parties so that they may make submissions as to the law.

Adjournment for view

(9) If it appears to be in the interests of justice, the board may direct that the board, the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Release of exhibits

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

Hearing not stayed

(11) If the police officer is charged with an offence under a law of Canada or of a province, the hearing shall continue unless the presiding officer, after consulting with the Crown Attorney, is of the opinion that it should be stayed until the conclusion of the court proceedings.

Only members at hearing to participate in decision

(12) No member of the board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument; except with the parties' consent, no decision shall be given unless all the members so present participate in it.

Decision

(13) The decision of a majority of the members of the board is the board's decision.

Penalties

96.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may make submissions as to penalty and the board of inquiry may,

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days;

(e) direct that the police officer forfeit not more than five days' pay; or

(f) direct that the police officer forfeit not more than twenty days off.

Idem

(2) Instead of or in addition to a penalty described in subsection (1), the board may reprimand the police officer.

Notice of decision

(3) The board shall promptly give written notice of the decision, with reasons, to the parties and the Attorney General.

Appeal to Divisional Court

97.—(1) A party to a hearing before a board of inquiry may appeal to the Divisional Court within thirty days of receiving notice of the board's decision.

Grounds for appeal

(2) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Attorney General

(3) The Attorney General is entitled to be heard, by counsel or otherwise, on the argument of the appeal.

POLICE COMPLAINTS COMMISSIONER

Appointment of Commissioner

98.—(1) The Lieutenant Governor in Council shall appoint a Police Complaints Commissioner, to hold office for a term not exceeding five years.

Reappointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding five years in each case.

Staff

R.S.O. 1980, c. 418

(3) Such employees as are considered necessary for the purposes of this Part may be appointed under the *Public Service Act*.

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received under this Part.

Monitoring handling of complaints

(6) The Commissioner shall monitor the handling of complaints by bureaus and chiefs of police.

Local offices

(7) The Commissioner may establish local offices.

Idem

(8) Anything that is given to or served upon the Commissioner under this Part may be given or served at one of the local offices.

Annual report

(9) The Commissioner shall report annually to the Attorney General.

Audit

(10) The Commissioner's accounts shall be audited annually by the Provincial Auditor.

Powers on investigation or review

99.—(1) For the purposes of an investigation under section 87 or 88 or a review under section 90, the Commissioner may, if he or she has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, enter a police station after informing the chief of police and examine there documents and things related to the complaint.

Powers on inquiry

R.S.O. 1980, c. 411

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or review as if it were an inquiry under that Act.

Appointment of person to make investigation or review

(3) The Commissioner may, in writing, appoint a person to make any investigation or review the Commissioner is authorized to make and the person has all the powers and duties of the Commissioner relating to the investigation and the review.

Identification

(4) The person shall be provided with a certificate of appointment containing his or her photograph, and while exercising any powers or performing any duties in respect of the investigation or review shall produce the certificate of appointment upon request.

Report

(5) The person shall report the results of the investigation or review to the Commissioner.

Obstruction

(6) No person shall obstruct the Commissioner or a person appointed under subsection (3) or withhold from the Commissioner or person or conceal or destroy any documents or things related to the investigation or review.

Search warrant

(7) If a justice of the peace is satisfied, on an application made without notice by the Commissioner or a person appointed under subsection (3), that there are reasonable grounds to believe that there are in any place documents or things relating to an investigation or review, the justice of the peace may make an order authorizing the applicant, together with such persons as he or she calls on for assistance, to enter the place, by force if necessary, search for the documents or things and examine them.

Entry and search at night restricted

(8) The entry and search shall not be made between the hours of 9 p.m. and 6 a.m. unless the order so authorizes.

Removal of books, etc.

(9) The Commissioner may, upon giving a receipt, remove any documents or things examined under subsection (1) or (7) relating to the investigation or review, shall cause them to be copied with reasonable dispatch and shall then return them promptly to the person from whom they were removed.

Admissibility of copies

(10) A copy made as provided in subsection (9) and certified to be a true copy by the Commissioner is admissible in evidence in any proceeding and is proof, in the absence of evidence to the contrary, of the original document and its contents.

Appointment of expert

(11) The Commissioner may appoint an expert to examine documents or things examined under subsection (1) or (7).

Recommendations concerning police practices or procedures

100.—(1) The Commissioner may make recommendations with respect to the practices or procedures of a police force by sending the recommendations, with any supporting documents, to,

(a) the Attorney General;

(b) the Solicitor General;

(c) the chief of police;

(d) the association, if any; and

(e) the police services board, in the case of a municipal police force.

Comments

(2) Within ninety days of receiving the recommendations, the chief of police, association and police services board shall send their comments to the Attorney General, the Solicitor General and the Commissioner.

Judicial review of Commissioner's decisions

101. The Commissioner's decisions under subsection 82 (5) (complaint to continue to be dealt with despite informal resolution), subsection 83 (6) (complaint to continue to be dealt with despite withdrawal) and clause 87 (1) (b) (decision to conduct investigation because of undue delay) shall be deemed to be made in the exercise of a statutory power of decision.

BOARDS OF INQUIRY

Panel for boards of inquiry

102.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry to conduct hearings in connection with complaints.

Recommendations for appointment

(2) One-third of the members of the panel shall be members of the Law Society of Upper Canada who are recommended for appointment by the Attorney General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of

Upper Canada, who are recommended for appointment by the Police Association of Ontario.

Recommendations for appointment

(4) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Association of Municipalities of Ontario.

Failure to make recommendations

(5) The Attorney General may make the recommendations under subsection (3) or (4) if the Police Association of Ontario or the Association of Municipalities of Ontario, as the case may be, do not submit written recommendations to the Attorney General within the time that he or she specifies.

Term

(6) Appointments to the panel shall be for a term not exceeding three years and a member may be reappointed for a further term or terms.

Continuance in office for uncompleted assignments

(7) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board to which he or she was assigned before the expiration of the term.

Remuneration

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Chair

(9) The Lieutenant Governor in Council shall appoint a person to be the chair of the panel.

Annual summary of decisions

(10) The chair shall cause to be prepared and published an annual summary of the decisions of boards, with reasons.

GENERAL MATTERS

Police officer's employment record

103. No reference to a complaint, a hearing held under this Part or a disciplinary hearing conducted under section 60 as a result of the complaint shall be made in the police officer's employment record, and the matter shall not be taken into account for any purpose related to his or her employment, unless,

(a) the police officer is convicted of an offence in connection with the incident;

(b) misconduct is proved on clear and convincing evidence at a hearing held under this Part or at a disciplinary hearing;

(c) the chief of police cautions or admonishes the police officer in connection with the incident, in accordance with subsection 59 (1);

(d) the police officer admits misconduct in the course of attempts to resolve the complaint informally; or

(e) the police officer resigns before the complaint is finally disposed of.

Resignation after hearing ordered

104.—(1) This section applies to a police officer who resigns from the police force after a hearing is ordered under section 89 or 90.

Idem

(2) If the police officer resigns before a board of inquiry is constituted under section 92, the following rules apply:

1. No board of inquiry shall be constituted unless the police officer, within six months of the resignation, applies for employment with a police force or is employed by a police force.

2. In that case, the board acquires jurisdiction over the police officer despite the earlier resignation.

Idem

(3) If the police officer resigns after a board of inquiry is constituted, the following rules apply:

1. The board of inquiry loses jurisdiction over the police officer.

2. If the police officer, within six months of the resignation, applies for employment with a police force or is employed by a police force, the board's jurisdiction is revived.

Notice

105.—(1) A notice or other document required to be given or sent under this Part is sufficiently given if delivered personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Delegation by chief of police

106.—(1) The chief of police may authorize any police officer of the rank of inspector or higher (from another police

force if there is none in the chief's own police force) to exercise any power or perform any duty of the chief of police referred to in this Part.

Delegation by Commissioner

(2) The Commissioner may authorize any member of his or her staff to exercise any power or perform any duty of the Commissioner referred to in this Part.

Confidentiality

107.—(1) Every person engaged in the administration of this Part, including a member of a police force, shall preserve secrecy in respect of all matters that come to his or her knowledge in the course of his or her duties, and shall not communicate any such matter to any other person except,

(a) as this Act or the regulations require;

(b) as may be required for law enforcement purposes;

(c) to his or her counsel; or

(d) with the consent of the person to whom the matter relates.

Testimony

(2) No person to whom subsection (1) applies shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Inadmissibility

(3) No document prepared under this Part as the result of a complaint and no statement referred to in subsection 95 (6) (statements made during attempt at informal resolution) is admissible in a civil proceeding, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Non-application of R.S.O.1980, c. 325

108. The *Ombudsman Act* does not apply to anything done under this Part.

Agreement for contributions

109. The Attorney General may, with the approval of the Lieutenant Governor in Council, enter into an agreement with a municipality providing for its payment to the Treasurer of Ontario, on such conditions as may be agreed upon, of contributions in respect of the amounts required for the purposes of this Part.

Offence

110. A person who contravenes subsection 95 (4) (photography at hearing), 99 (6) (obstructing Commissioner) or 107 (1) (confidentiality) is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Definition
1984, c. 63

111.—(1) In subsection (2), "former Act" means the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Transition, complaints under former Act

(2) Despite the repeal of the former Act by subsection 145 (1), complaints made under the former Act before the day this Act comes into force shall be dealt with in accordance with the former Act, except that hearings before boards of inquiry that are constituted after the day this Act comes into force shall be conducted in accordance with this Part.

PART VII

Special Investigations

Special investigations unit

112.—(1) There shall be a special investigations unit of the Ministry of the Solicitor General.

Composition

(2) The unit shall consist of,

(a) a director, who shall not be a police officer or former police officer, appointed by the Solicitor General; and

(b) investigators appointed by the Solicitor General to carry out investigations under the director's supervision.

Peace officers

(3) The director and investigators are peace officers.

Investigations

(4) The director may, of his or her own motion, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.

Charges

(5) The director shall lay charges against police officers in connection with the matters investigated if, in his or her opinion, there are reasonable and probable grounds to do so.

Report

(6) The director shall report the results of investigations to the Attorney General.

Co-operation of police forces

(7) Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations.

PART VIII

Labour Relations

Definitions

113. In this Part,

"Arbitration Commission" means the Ontario Police Arbitration Commission continued by subsection 129 (1);

"senior officer" means a police officer of the rank of inspector or higher or a civilian employee employed in a supervisory or confidential capacity.

Exclusion of O.P.P.

114.—(1) This Part, except section 115, does not apply to the Ontario Provincial Police.

Exclusion of chief of police and deputy

(2) The working conditions and remuneration of the chief of police and deputy chief of police of a police force shall be determined under clause 31 (1) (d) (responsibilities of board) and not under this Part.

Hearing re person's status

115.—(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.

Decision final

(2) The Commission's decision is final.

Membership in trade union prohibited, exception

116. A member of a police force shall not become or remain a member of a trade union or of an organization that is affiliated directly or indirectly with a trade union, unless the membership is required for secondary activities that do not contravene section 46 and the chief of police consents.

Categories

117.—(1) If a majority of the members of a police force, or an association that is entitled to give notices of desire to bargain, assigns the members of the police force to different categories for the purposes of this Part, bargaining, conciliation and arbitration shall be carried on as if each category were a separate police force.

Senior officers

(2) If at least 50 per cent of the senior officers of a police force belong to an association composed only of senior officers, bargaining, conciliation and arbitration shall be carried on as if the senior officers were a separate police force.

Notice of desire to bargain

118.—(1) If no agreement exists or at any time after ninety days before an agreement would expire but for subsection 127 (1) or (2), a majority of the members of a police force may give the board notice in writing of their desire to bargain with a view to making an agreement, renewing the existing agreement, with or without modifications, or making a new agreement.

Bargaining

(2) Within fifteen days after the notice of desire to bargain is given or within the longer period that the parties agree

upon, the board shall meet with a bargaining committee of the members of the police force.

Idem

(3) The parties shall bargain in good faith and make every reasonable effort to come to an agreement dealing with remuneration, pensions, sick leave credit gratuities, grievance procedures and working conditions (except those governed by the regulations) of the members of the police force.

Filing of agreement

(4) The board shall promptly file a copy of any agreement with the Arbitration Commission.

Association

(5) If at least 50 per cent of the members of the police force belong to an association, it shall give the notice of desire to bargain.

Pension plans under R.S.O.1980, c. 302

(6) If the notice of desire to bargain involves pensions under a pension plan established or to be established under the *Municipal Act*, it shall also be given to the Minister of Municipal Affairs, who may determine the maximum pension benefits that may be included in any agreement or award with respect to the pension plan.

Bargaining committee

119.—(1) The members of the bargaining committee shall be members of the police force.

Police organization

(2) If the notice of desire to bargain is given by an association that is affiliated with a police organization, or if at least 50 per cent of the members of the police force belong to a police organization, a member of the organization may attend the parties' bargaining sessions in an advisory capacity.

Counsel and advisors

(3) One legal counsel and one other advisor for each of the bargaining committee and the board may also attend the parties' bargaining sessions.

Chief of police

(4) The chief of police may also attend the parties' bargaining sessions in an advisory capacity.

Appointment of conciliation officer

120.—(1) When a notice of desire to bargain has been given, either party may ask the Solicitor General to appoint a conciliation officer.

Idem

(2) The Solicitor General shall consider the matter and shall appoint a conciliation officer or inform the parties that he or she does not consider the case appropriate for the appointment of a conciliation officer.

Duty of conciliation officer

(3) If a conciliation officer is appointed, he or she shall confer with the parties and endeavour to effect an agreement

and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(4) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that an agreement may be made within a reasonable time if the period is extended.

Report

(5) When the conciliation officer reports to the Solicitor General that an agreement has been reached or that an agreement cannot be reached, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(6) Neither party shall give a notice requiring matters in dispute to be referred for arbitration under section 121 until the Solicitor General has informed the parties of the conciliation officer's report or informed them that he or she does not consider the case appropriate for the appointment of a conciliation officer.

Arbitration

121.—(1) If matters remain in dispute after bargaining under section 118 and conciliation, if any, under section 120, a party may give the Solicitor General and the other party a written notice referring the matters to arbitration.

Composition of arbitration board

(2) If the parties agree, the arbitration board shall consist of one person appointed by each party and a chair appointed by the Solicitor General; otherwise, it shall consist of one person appointed by the Solicitor General.

Time for arbitration

(3) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver its decision or award within sixty days after commencing the arbitration.

Representations by council

(4) The municipal council may make representations before the arbitration board if it is authorized to do so by a resolution.

Criteria

(5) In making an award, the arbitration board shall take into account the interest and welfare of the community served by the police force as well as any local factors affecting the community.

Filing of award

(6) The arbitration board shall promptly file a copy of its decision or award with the Arbitration Commission.

Costs and expenses

(7) The following rules apply with respect to the costs and expenses of the arbitration:

1. The Arbitration Commission shall pay the fees of the person the Solicitor General appoints to the arbitration board.

2. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

3. The parties shall share equally the costs and expenses for matters shared in common.

Dispute, appointment of conciliation officer

122.—(1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a difference arises between the parties concerning an agreement or an arbitrator's decision or award made under this Part, or if it is alleged that an agreement or award has been violated.

Duty of conciliation officer

(2) The conciliation officer shall confer with the parties and endeavour to resolve the dispute and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(3) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that the dispute may be resolved within a reasonable time if the period is extended.

Report

(4) When the conciliation officer reports to the Solicitor General that the dispute has been resolved or that it cannot be resolved by conciliation, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(5) Neither party shall give a notice referring the dispute for arbitration until the Solicitor General has informed the parties of the conciliation officer's report.

Arbitration after conciliation fails

123.—(1) If the conciliation officer reports that the dispute cannot be resolved by conciliation, either party may give the Solicitor General and the other party a written notice referring the dispute to arbitration.

Idem

(2) Subsection (1) applies in addition to any grievance or arbitration procedure provided by the agreement, decision or award.

Composition of arbitration board

(3) If the parties agree, the arbitration board shall consist of one person appointed by each party and a chair appointed

by the Solicitor General; otherwise, it shall consist of one person appointed by the Solicitor General.

Time for arbitration

(4) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver a decision within a reasonable time.

Filing of decision

(5) The arbitration board shall promptly file a copy of its decision with the Arbitration Commission.

Costs and expenses

(6) The following rules apply with respect to the costs and expenses of the arbitration:

1. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

2. The parties shall share equally the fees of any person appointed by the Solicitor General and the other costs and expenses for matters shared in common.

Enforcement

(7) After the day that is thirty days after the delivery of the decision or after the day that the decision provides for compliance, whichever is later, the arbitration board may, of its own motion, and shall, at a party's request, file a copy of the decision, in the prescribed form, in the office of the Registrar of the Supreme Court.

Idem

(8) The decision shall be entered in the same way as a judgment of the Supreme Court and may be enforced as such.

Extension of time

124. The parties may agree to extend any period of time mentioned in this Part.

Non-application of R.S.O.1980, c. 25

125. The *Arbitrations Act* does not apply to arbitrations conducted under this Part.

Agreements, decisions and awards binding

126. Agreements, decisions and awards made under this Part bind the board and the members of the police force.

Duration of agreements, decisions and awards

127.—(1) Agreements, decisions and awards remain in effect until the end of the year in which they come into effect and thereafter continue in effect until replaced.

Longer duration if parties agree

(2) The parties to an agreement may provide that the agreement and any decisions or awards made with respect to it shall remain in effect until the end of the year following the

year in which they come into effect and thereafter shall continue in effect until replaced.

Provision for expenditures

128.—(1) If, when the council is adopting its annual estimates, a notice of desire to bargain has been given but there is not yet an agreement, decision or award, the council shall make such provision for the payment of expenditures that will result from the expected agreement, decision or award as it considers adequate.

Coming into effect

(2) An agreement, decision or award comes into effect on the first day of the fiscal period in respect of which the municipal council may make provision for it in its estimates, whether that day is before or after the agreement, decision or award is made.

Exception

(3) A provision of the agreement, decision or award that does not involve municipal expenditures may come into effect earlier than the day referred to in subsection (2).

Arbitration Commission continued

129.—(1) The commission known as the Ontario Police Arbitration Commission is continued.

Composition

(2) The Arbitration Commission shall be composed of the following members, appointed by the Lieutenant Governor in Council,

(a) two representatives of boards;

(b) two representatives of members of associations; and

(c) a chair.

Terms of office

(3) The representatives of boards and members of associations shall hold office for two-year terms and may be reappointed; the chair shall hold office during pleasure.

Staff

R.S.O. 1980, c. 418

(4) Such employees as are necessary for the proper conduct of the Arbitration Commission's work may be appointed under the *Public Service Act*.

Responsibilities of Arbitration Commission

(5) The Arbitration Commission has the following responsibilities,

(a) maintaining a register of arbitrators who are available for appointment;

(b) assisting arbitrators by making administrative arrangements in connection with arbitrations;

(c) fixing the fees of arbitrators appointed by the Solicitor General under section 123;

(d) sponsoring the publication and distribution of information about agreements, arbitrations and awards;

(e) sponsoring research on the subject of agreements, arbitrations and awards;

(f) maintaining a file of agreements, decisions and awards made under this Part.

Regulations

(6) Subject to the approval of the Lieutenant Governor in Council, the Arbitration Commission may make regulations,

(a) governing the conduct of arbitrations and prescribing procedures for them;

(b) prescribing forms and providing for their use.

PART IX

REGULATIONS AND MISCELLANEOUS

Property in possession of police force

130.—(1) This section applies to personal property of all kinds, except firearms and money, that comes into the possession of a police force under either of the following circumstances:

1. The property was stolen from its owner or was found abandoned in a public place, and the chief of police is unable to determine who owns it.

2. The property was seized by a member of the police force in the lawful execution of his or her duties, all legal proceedings in respect of the property have been completed, there is no court order for its disposition and there is no legal requirement, apart from this section, that it be retained or disposed of.

Sale

(2) The chief of police may cause the property to be sold and use the proceeds for any purpose that he or she considers in the public interest.

Perishable property

(3) If the property is perishable, it may be sold at any time without notice.

Non-perishable property

(4) If the property is not perishable, the following rules apply to its sale:

1. The property may be sold when it has been in the possession of the police force for at least three months.

2. The sale shall be by public auction.

3. At least ten days notice of the time and place of the public auction shall be given by publication in a newspaper of general circulation in the municipality.

4. The sale may be adjourned, repeatedly if necessary, until the property is sold.

Claim of owner of property

(5) If property has been sold before it has been in the possession of the police force for three months and, if the owner makes a claim before that time, the owner is entitled to receive the proceeds, less the costs of storage, advertising and sale.

Register of property

(6) The chief of police shall ensure that the police force keeps a register of property and that the following rules are followed:

1. The description and location of every item of property shall be recorded.

2. If the property is sold, full particulars shall be recorded.

3. If the property is returned to its owner, his or her name, address and telephone number shall be recorded.

Exception

R.S.O. 1980, c. 198

(7) This section does not apply to a motor vehicle that is impounded under section 192 of the *Highway Traffic Act*.

Money

131.—(1) This section applies to money that comes into the possession of a police force under the circumstances described in paragraph 1 or 2 of subsection 130 (1).

Accounting

(2) The money shall be accounted for according to the prescribed method.

Use of money

(3) If three months have elapsed after the day the money came into the possession of the police force and the owner has not claimed it, the chief of police may cause it to be used for any purpose that he or she considers in the public interest.

Firearms

132.—(1) This section applies to firearms that are in the possession of a police force because they have been found, turned in, seized or forfeited on a prosecution.

Safekeeping, return to owner

(2) The chief of police shall ensure that firearms are securely stored, and that they are returned to their owners if there is a court order or other legal requirement to that effect.

Destruction

(3) If all possible court proceedings relating to a firearm have been completed or the time for them has expired and there is no court order or other legal requirement that the firearm be returned to its owner, the chief of police shall ensure that it is destroyed promptly, unless subsection (4) applies.

Firearm of special interest

(4) If the chief of police considers the firearm unique, an antique, or of educational or historical value, he or she shall notify the Director of the Centre of Forensic Sciences.

Idem

(5) If the Director indicates, within three months of receiving notice, that the firearm is required for the Centre's collection, the chief of police shall ensure that it is transferred there.

Idem

(6) If the Director indicates that the firearm is not required for the Centre's collection or fails to respond within three months of receiving notice, the chief of police shall ensure that the firearm is destroyed promptly.

Disposal otherwise than by destruction

(7) The chief of police may dispose of a firearm to which subsection (6) applies, otherwise than by having it destroyed, if he or she first obtains the Solicitor General's approval of the method of disposal.

Register of firearms

(8) The chief of police shall ensure that the police force keeps a register of firearms and that the following rules are followed:

1. Every firearm's description and location shall be recorded.

2. When a firearm ceases to be in the possession of the board or of a member of the police force, full particulars shall be recorded, including the name of the person who disposed of it and the date and method of disposal.

3. If the firearm is returned to its owner, his or her name, address and telephone number shall also be recorded.

4. On or before the 31st day of January in each year, a statement shall be filed with the Commission listing the firearms that have come into the possession of the police force during the preceding calendar year, indicating which firearms are still being retained and which have been disposed of, and giving particulars of the disposition.

Regulations

133.—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing standards for police services;

2. prescribing procedures for the inspection and review by the Solicitor General of police forces;

3. requiring municipalities to provide police detention facilities, governing those facilities and providing for their inspection;

4. providing for financial aid to police training schools;

5. prescribing the minimum amount of remuneration to be paid by municipalities to the members of boards who are appointed by the Lieutenant Governor in Council or Solicitor General;

6. prescribing the procedures to be followed by boards and the places at which their meetings shall be held;

7. prescribing the forms of oaths or affirmations of office and secrecy for the purposes of section 32 (members of boards), section 45 (police officers), subsection 52 (5) (auxiliary members of police forces), subsection 53 (7) (special constables) and subsection 54 (6) (First Nations Constables);

8. respecting the government, operation and administration of police forces;

9. governing the qualifications for the appointment of persons to police forces and for their promotion;

10. prescribing groups of persons for the purposes of subsection 48 (1) (employment equity plans);

11. prescribing matters to be contained in employment equity plans;

12. respecting the political activities in which municipal police officers are permitted to engage;

13. establishing the ranks that shall be held by members of municipal police forces;

14. prescribing the minimum salary or other remuneration and allowances to be paid to members of municipal police forces;

15. regulating or prohibiting the use of any equipment by a police force or any of its members;

16. regulating the use of force by members of police forces;

17. prescribing standards of dress for police officers on duty and prescribing requirements respecting police uniforms;

18. prescribing courses of training for members of police forces and prescribing standards in that connection;

19. governing the conduct, duties, suspension and dismissal of members of police forces;

20. describing the circumstances under which members of police forces are permitted and not permitted to pursue persons by means of motor vehicles, and prescribing procedures that shall be followed when a person is pursued in that manner;

21. prescribing the records, returns, books and accounts to be kept by police forces and their members;

22. prescribing the method of accounting for fees and costs that come into the hands of members of police forces;

23. prescribing a code of offences for the purpose of section 56 (misconduct);

24. providing for the payment of fees and expenses to witnesses at hearings conducted under Part V or VI;

25. prescribing procedures for the investigation of complaints under Part VI;

26. assigning further duties to the Police Complaints Commissioner;

27. prescribing the method of accounting for money to which section 131 applies;

28. prescribing forms and providing for their use;

29. prescribing any matter that this Act requires to be prescribed or refers to as being prescribed;

30. respecting any matter that is necessary or advisable to implement this Act effectively.

Idem

(2) A regulation made under subsection (1) may be general or particular in its application.

PART X

Consequential Amendments and Repeals

134. Section 66 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Non-application of 1989, c. ...

66.—(1) The *Police Services Act, 1989*, being chapter ..., except section 15 (municipal by-law enforcement officers), does not apply to the District Corporation or to an area municipality.

Non-application of R.S.O. 1980, c. 302, ss. 202, 203

(2) Sections 202 and 203 of the *Municipal Act* do not apply to an area municipality.

135.—(1) Section 174 of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

174. In this Part, "Metropolitan Board" means The Municipality of Metropolitan Toronto Police Services Board.

(2) Subsections 175 (1) and (2) of the said Act are repealed.

(3) Subsection 177 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10 and amended by 1988, chapter 12, section 1, is repealed and the following substituted therefor:

Composition of Metropolitan Board

(1) The Metropolitan Council shall be deemed to have applied to the Lieutenant Governor in Council for an increase

in the size of its board under subsection 27 (9) of the *Police Services Act, 1989* and the Lieutenant Governor in Council shall be deemed to have approved the application. 1989, c. ...

(4) Section 178 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10, is repealed.

136.—(1) Section 73 of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

73. In this Part, "Durham Police Board" means The Regional Municipality of Durham Police Services Board. Definition

(2) Section 74 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 1, is repealed.

(3) Subsection 75 (1) of the said Act is repealed and the following substituted therefor:

(1) The Durham Police Board and the members of the Durham Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

137.—(1) Section 68 of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

68. In this Part, "Haldimand-Norfolk Police Board" means The Regional Municipality of Haldimand-Norfolk Police Services Board. Definition

(2) Section 69 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 2, is repealed.

(3) Subsections 70 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

(1) The Haldimand-Norfolk Police Board and the members of the Haldimand-Norfolk Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

(2) Despite subsection 31 (1) of the *Police Services Act, 1989*, the Haldimand-Norfolk Police Board is responsible for providing police services only for those portions of the Regional Area in which a local municipality maintained a police force on the 31st day of March, 1974. Jurisdiction 1989, c. ...

Idem

(3) With the Solicitor General's approval, the Haldimand-Norfolk Police Board may assume responsibility for providing police services for additional portions of the Regional Area.

138.—(1) Section 79 of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

79. In this Part, "Halton Police Board" means The Regional Municipality of Halton Police Services Board.

(2) Section 80 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 3, is repealed.

(3) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Halton Police Board and the members of the Halton Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

139.—(1) Section 90 of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

90. In this Part, "Hamilton-Wentworth Police Board" means The Regional Municipality of Hamilton-Wentworth Police Services Board.

(2) Section 91 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 4, is repealed.

(3) Subsection 92 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Hamilton-Wentworth Police Board and the members of the Hamilton-Wentworth Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

140.—(1) Section 116 of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

116. In this Part, "Niagara Police Board" means The Regional Municipality of Niagara Police Services Board.

(2) Section 117 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 5, is repealed.

(3) Subsection 118 (1) of the said Act is repealed and the following substituted therefor:

(1) The Niagara Police Board and the members of the Niagara Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

141.—(1) Section 74 of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

74. In this Part, "Peel Police Board" means The Regional Municipality of Peel Police Services Board. Definition

(2) Section 75 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 6, is repealed.

(3) Subsection 76 (1) of the said Act is repealed and the following substituted therefor:

(1) The Peel Police Board and the members of the Peel Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

142.—(1) Section 38 of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

38. In this Part, "Sudbury Police Board" means The Regional Municipality of Sudbury Police Services Board. Definition

(2) Section 39 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 57, section 7, is repealed.

(3) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

(1) The Sudbury Police Board and the members of the Sudbury Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

143.—(1) Section 109 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of

Ontario, 1980, is repealed and the following substituted therefor:

Definition

109. In this Part, "Waterloo Police Board" means The Regional Municipality of Waterloo Police Services Board.

(2) Section 110 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 8, is repealed.

(3) Subsection 111 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Waterloo Police Board and the members of the Waterloo Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

144.—(1) Section 111 of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

111. In this Part, "York Police Board" means The Regional Municipality of York Police Services Board.

(2) Section 112 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 9, is repealed.

(3) Subsection 113 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The York Police Board and the members of the York Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

145.—(1) The following are repealed:

1. **The *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, except section 57a, as enacted by the Statutes of Ontario, 1989, chapter 24, section 1.**

2. **The *Police Amendment Act, 1981*, being chapter 55.**

3. **The *Police Amendment Act, 1983*, being chapter 57.**

4. **Section 201 of the *Courts of Justice Act, 1984*, being chapter 11.**

5. Section 53 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.

6. The *Metropolitan Toronto Police Force Complaints Act, 1984*, being chapter 63.

7. The *Metropolitan Toronto Police Force Complaints Amendment Act, 1986*, being chapter 31.

(2) The title of the *Police Act* is repealed and the following substituted therefor:

COURT SECURITY ACT

146. This Act binds the Crown in right of Ontario. Crown bound

147. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

148. The short title of this Act is the *Police Services Act, 1989*. Short title

Bill 107

An Act to revise the Police Act and amend the law relating to Police Services

The Hon. S. Offer
Solicitor General



1st Reading December 20th, 1989
2nd Reading May 17th, 1990
3rd Reading
Royal Assent

(Reprinted as amended by the Administration of Justice Committee)

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EXPLANATORY NOTES

The Bill replaces the *Police Act*. The following are some of the proposed changes:

1. A declaration of principles is included (section 1).

2. Every municipality responsible for providing police services is required to establish a police services board to govern the municipal police force (section 27). These boards (formerly boards of commissioners of police) will be supervised by the Ontario Civilian Commission on Police Services (formerly the Ontario Police Commission) (Part II).

3. The minimum educational standard required of candidates for the position of police officer is raised from two to four years of secondary education (section 43).

4. Every police force is required to establish and implement an employment equity plan (section 48).

5. Special constables will be appointed by municipal police services boards and by the Commissioner of the Ontario Provincial Police (section 53).

6. The category of First Nations Constable is created (section 54).

7. Provisions relating to police disciplinary proceedings are revised (Part V).

8. A province-wide mandatory system for dealing with public complaints is introduced, based on the system currently in use in The Municipality of Metropolitan Toronto (Part VI).

9. A special investigations unit of the Ministry of the Solicitor General is established to investigate police conduct and to lay charges where appropriate (Part VII).

10. Bargaining, conciliation and arbitration provisions that apply to municipal police forces are revised (Part VIII).

11. The regulation-making powers of the Lieutenant Governor in Council are expanded to cover subjects such as standards of police services, the administration and operation of police forces, police pursuits and political activities (section 133).

12. Distinctions between municipal police forces and the Ontario Provincial Police are reduced.

Bill 107 1989

An Act to revise the Police Act and amend the law relating to Police Services

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Police services shall be provided throughout Ontario in accordance with the following principles: Declaration of principles

1. The need to ensure the safety and security of all persons and property in Ontario.

2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code, 1981*. 1981, c. 53

3. The need for co-operation between the providers of police services and the communities they serve.

4. The importance of respect for victims of crime and understanding of their needs.

5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.

6. The need to ensure that police forces are representative of the communities they serve.

Definitions

2. In this Act,

"association" means an association whose members belong to one police force and whose objects include the improvement of their working conditions and remuneration;

"board" means, except in Part VI, a municipal police services board;

"chief of police" means a municipal chief of police or the Commissioner of the Ontario Provincial Police and includes an acting chief of police;

"Commission" means the Ontario Civilian Commission on Police Services;

"Commissioner" means, except in Part VI, the Commissioner of the Ontario Provincial Police;

"member of a police force" means a police officer, and in the case of a municipal police force includes an employee who is not a police officer;

"municipality" includes district, metropolitan and regional municipalities and the County of Oxford;

"police force" means the Ontario Provincial Police or a municipal police force;

"police officer" means a chief of police or any other police officer, but does not include a special constable, a First Nations Constable, a by-law enforcement officer or an auxiliary member of a police force;

"prescribed" means prescribed by the regulations;

"regulations" means the regulations made under this Act.

PART I

RESPONSIBILITY FOR POLICE SERVICES

SOLICITOR GENERAL

Administration of Act

3.—(1) This Act, except Part VI, shall be administered by the Solicitor General.

Duties and powers of Solicitor General

(2) The Solicitor General shall,

(a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels;

(b) monitor boards and police forces to ensure that they comply with prescribed standards of service;

(c) monitor the establishment and implementation of employment equity plans;

(d) develop and promote programs to enhance professional police practices, standards and training;

(e) conduct a system of inspection and review of police forces across Ontario;

(f) assist in the co-ordination of police services;

(g) consult with and advise boards, municipal chiefs of police, employers of special constables and associations on matters relating to police and police services;

(h) develop, maintain and manage programs and statistical records and conduct research studies in respect of police services and related matters;

(i) provide to boards and municipal chiefs of police information and advice respecting the management and operation of police forces, techniques in handling special problems and other information calculated to assist;

(j) issue directives and guidelines respecting policy matters;

(k) develop and promote programs for community-oriented police services;

(l) operate the Ontario Police College.

Ontario Police College continued

(3) The police college known as the Ontario Police College for the training of members of police forces is continued.

MUNICIPALITIES

Police services in municipalities

4.—(1) Every municipality to which this subsection applies shall provide adequate and effective police services in accordance with its needs.

Application of subsection (1)

(2) Subsection (1) applies to,

(a) cities, towns, villages and townships (other than area municipalities within regional or metropolitan municipalities); and

(b) regional and metropolitan municipalities.

Exception, Muskoka

(3) Subsection (1) does not apply to The District Municipality of Muskoka or to its area municipalities.

Exception, Ottawa-Carleton

(4) Subsection (1) does not apply to The Regional Municipality of Ottawa-Carleton but does apply to its area municipalities.

Exception, Oxford County

(5) Subsection (1) does not apply to the County of Oxford but does apply to its area municipalities.

Exemption of towns of less than 5,000

R.S.O. 1980, c. 31

(6) The Lieutenant Governor in Council may, on the Solicitor General's recommendation, exempt any town having a population of less than 5,000 according to the last enumeration taken under section 14 of the *Assessment Act* from the application of subsection (1), and the exemption continues in effect until it is revoked.

Restriction, villages and townships

(7) Subsection (1) applies to a village or township only if it has been so designated by the Lieutenant Governor in Council on the Solicitor General's recommendation; the designation may relate to all or part of the village or township.

Methods of establishing municipal police forces

5. A municipality's responsibility for providing police services shall be discharged in one of the following ways:

1. The board may appoint the members of a police force under clause 31 (1) (a), in which case the municipal council shall pay the cost of the police force.

2. The board may enter into an agreement under section 7 (sharing police services).

3. The council may enter into an agreement under section 10 (agreements for provision of police services by O.P.P.).

4. With the Commission's approval, the municipality may adopt a different method of providing police services.

Amalgamation of police forces

6.—(1) Despite any other Act, two or more municipalities that have police forces may enter into an agreement to amalgamate them.

Contents of amalgamation agreement

(2) The agreement shall deal with,

(a) the establishment and composition of a board for the amalgamated police forces;

(b) the amalgamation of the police forces and the appointment or transfer of their members;

(c) the amalgamated board's use of the assets and its responsibility for the liabilities associated with the police forces;

(d) the budgeting of the cost for the operation of the amalgamated police force;

(e) any other matter that is necessary or advisable to effect the amalgamation.

Commission's approval

(3) The agreement does not take effect until the Commission has approved the organization of the amalgamated police force.

Exception, board appointments

(4) Appointments to a board for amalgamated police forces may be made before the agreement takes effect.

Municipal agreements for sharing police services

7. Two boards may agree that one board will provide police services to the other, on the conditions set out in the agreement.

Additional municipal police forces

8.—(1) A municipality to which subsection 4 (1) (obligation to provide police services) does not apply may, with the Commission's approval, establish and maintain a police force.

Transition

R.S.O. 1980, c. 381

(2) An approval given or deemed to have been given under section 19 of the *Police Act* in respect of a police force that

was being maintained on the day before this Act comes into force shall be deemed to have been given under this section.

Revocation

(3) The Commission may revoke an approval given or deemed to have been given under this section.

Failure to provide police services

9.—(1) If the Commission finds that a municipality to which subsection 4 (1) applies is not providing police services, it may request that the Commissioner have the Ontario Provincial Police give assistance.

Inadequate police services

(2) If the Commission finds that a municipal police force is not providing adequate and effective police services or is not complying with this Act or the regulations, it may communicate that finding to the board of the municipality and direct the board to take the measures that the Commission considers necessary.

Idem

(3) If the board does not comply with the direction, the Commission may request that the Commissioner have the Ontario Provincial Police give assistance.

Crown Attorney's request

(4) In any area for which a municipality is required to provide police services, the Crown Attorney may request that the Commissioner have the Ontario Provincial Police give assistance.

Board's request

(5) A board may, by resolution, request that the Commissioner have the Ontario Provincial Police give assistance.

Request of chief of police in emergency

(6) A municipal chief of police who is of the opinion that an emergency exists in the municipality may request that the Commissioner have the Ontario Provincial Police give assistance.

Chief of police to advise board

(7) A chief of police who makes a request under subsection (6) shall advise the chair of the board of the fact as soon as possible.

Assistance of O.P.P.

(8) When a request is made under this section, the Commissioner shall have the Ontario Provincial Police give such assistance as he or she considers necessary.

Cost of services

(9) The Commissioner shall certify the cost of the services provided under this section by the Ontario Provincial Police and, unless the Solicitor General directs otherwise, the municipality shall pay that amount to the Treasurer of Ontario.

Idem

(10) The amount may be deducted from any grant payable to the municipality out of provincial funds or may be

recovered by a court action, with costs, as a debt due to Her Majesty.

Municipal agreements for provision of police services by O.P.P.

10.—(1) The Solicitor General may enter into an agreement with the council of a municipality for the provision of police services for the municipality by the Ontario Provincial Police.

Board's consent

(2) The agreement requires the board's consent.

Collective bargaining

(3) No agreement shall be entered into under this section if, in the Solicitor General's opinion, the council seeks the agreement for the purpose of defeating the collective bargaining provisions of this Act.

Duties of O.P.P.

(4) When the agreement comes into effect, the members of the Ontario Provincial Police assigned to the municipality shall provide police services, including by-law enforcement, for the municipality, and shall perform any other duties that are specified in the agreement.

Payment into Consolidated Revenue Fund

(5) The amounts received from the municipality under the agreement shall be paid into the Consolidated Revenue Fund.

Role of board

(6) If the municipality has an agreement under this section, section 31 (responsibilities of board), section 38 (municipal police force) and clause 39 (2) (a) (estimates respecting police force) do not apply; however, the board shall advise the Solicitor General and the senior officer of the Ontario Provincial Police in the municipality with respect to police services in the municipality, and may generally determine priorities in the municipality with respect to police services, in accordance with the agreement and with provincial policies affecting the Ontario Provincial Police.

Fines

11.—(1) This section applies if a municipality is entitled to receive fines paid as a result of prosecutions instituted by police officers of the municipal police force.

Idem

(2) If the municipality does not have its own police force because of an agreement under section 7 or 10, the police officers who are assigned to the municipality under the agreement shall, for the purposes of determining entitlement to fines, be deemed to be police officers of the municipal police force.

Rates for cost of police services

12.—(1) With the Commission's approval, the costs incurred by a municipality in providing police services may be paid by levying different rates for different areas defined by the municipal council or by levying rates in some but not all areas.

Exemption for farm lands and buildings

(2) With the Commission's approval, the municipal council may grant a total or partial exemption from a rate or rates levied under subsection (1) to lands and buildings used exclusively for farming purposes.

Special areas

13.—(1) If, because of the establishment of a business or for any other reason, special circumstances or abnormal conditions in an area make it inequitable, in the Solicitor General's opinion, to impose the responsibility for police services on a municipality or on the Province, the Lieutenant Governor in Council may designate the area as a special area.

Agreement for provision of police services by O.P.P.

(2) The person who operates the business or owns the special area shall enter into an agreement with the Solicitor General for the provision of police services by the Ontario Provincial Police for the special area.

Duties of O.P.P., payment

(3) Subsections 10 (4) and (5) apply to the agreement with necessary modifications.

Failure to enter into agreement

(4) If the person who operates the business or owns the special area does not enter into an agreement as subsection (2) requires, the Ontario Provincial Police shall provide police services for the area.

Cost of services

(5) The costs of the services may be recovered from the person by a court action, with costs, as a debt due to Her Majesty.

Police services outside municipality

14. A municipality that has an interest in land outside the territory of the municipality may agree to pay all or part of the cost of providing police services for the land.

Municipal by-law enforcement officers

15.—(1) A municipal council may appoint persons to enforce the by-laws of the municipality.

Peace officers

(2) Municipal by-law enforcement officers are peace officers for the purpose of enforcing municipal by-laws.

Aid to survivors

16. A municipal council may grant financial or other assistance for the benefit of the surviving spouses and children of members of the municipal police force who die from injuries received or illnesses contracted in the discharge of their duties.

ONTARIO PROVINCIAL POLICE

Commissioner

17.—(1) There shall be a Commissioner of the Ontario Provincial Police who shall be appointed by the Lieutenant Governor in Council.

(2) Subject to the Solicitor General's direction, the Commissioner has the general control and administration of the Ontario Provincial Police and the employees connected with it. Functions

(3) The Commissioner shall prepare and implement an employment equity plan in accordance with section 48 and the regulations. Employment equity plans

(4) After the end of each calendar year, the Commissioner shall file with the Solicitor General an annual report on the affairs of the Ontario Provincial Police. Annual report

18.—(1) The Ontario Provincial Police shall consist of the Commissioner and other police officers appointed under the *Public Service Act*. Composition of O.P.P. R.S.O. 1980, c. 418

(2) The Commissioner shall establish the ranks within the Ontario Provincial Police and shall determine the rank of each police officer. Ranks

(3) The Lieutenant Governor in Council may name police officers of the Ontario Provincial Police to the rank of commissioned officers and may authorize the issue of commissions to them under the Great Seal. Commissioned officers

(4) The Commissioner may appoint such other employees as are required in connection with the Ontario Provincial Police. Employees

19.—(1) The Ontario Provincial Police have the following responsibilities: Responsibilities of O.P.P.

1. Providing police services in respect of the parts of Ontario that do not have municipal police forces other than by-law enforcement officers.

2. Providing police services in respect of all navigable bodies and courses of water in Ontario, except those that lie within municipalities designated by the Solicitor General.

3. Maintaining a traffic patrol on the King's Highway, except the parts designated by the Solicitor General.

4. Maintaining a traffic patrol on the connecting links within the meaning of section 21 of the *Public Transportation and Highway Improvement Act* that are designated by the Solicitor General. R.S.O. 1980, c. 421

5. Maintaining investigative services to assist municipal police forces on the Solicitor General's direction or at the Crown Attorney's request.

Municipal by-laws

(2) The Ontario Provincial Police have no responsibilities in connection with municipal by-laws, except under agreements made in accordance with section 10.

Aid to survivors

20. The Lieutenant Governor in Council may, out of money appropriated for that purpose by the Legislature, grant financial or other assistance for the benefit of the surviving spouses and children of members of the Ontario Provincial Police who die from injuries received or illnesses contracted in the discharge of their duties.

PART II

Ontario Civilian Commission on Police Services

Commission continued

21.—(1) The commission known as the Ontario Police Commission is continued under the name of "Ontario Civilian Commission on Police Services".

Composition

(2) The Commission shall consist of not fewer than three and not more than nine members who shall be appointed by the Lieutenant Governor in Council.

Chair

(3) The Lieutenant Governor in Council may designate one of the members of the Commission to be the chair.

Delegation

(4) The chair may authorize a member of the Commission to exercise the Commission's powers and perform its duties with respect to a particular matter, but the authority conferred on the Commission by sections 23 and 24 may not be delegated.

Quorum

(5) Two members of the Commission constitute a quorum.

Proceedings open to the public

(6) Meetings, hearings, investigations and inquiries conducted by the Commission shall be open to the public, subject to subsection (7), and notice of them shall be published in the manner that the Commission determines.

Exception

(7) The Commission may exclude the public from all or part of a meeting, hearing, investigation or inquiry if it is of the opinion that,

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public

interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

Admissibility of documents

(8) A document purporting to be issued by the Commission and signed by one of its members is admissible in evidence without proof of the signature or authority of the person signing.

Annual report

(9) After the end of each calendar year, the Commission shall file with the Solicitor General an annual report on its affairs.

Expenses

(10) The money required for the Commission's purposes shall be paid out of the amounts appropriated by the Legislature for that purpose.

Powers and duties of Commission

22.—(1) The Commission's powers and duties include,

(a) if the Solicitor General advises the Commission that a board or municipal police force is not complying with prescribed standards of police services,

(i) directing the board or police force to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (1);

(b) if the Solicitor General advises the Commission that a board or municipal chief of police is not complying with the requirements of this Act and the regulations respecting employment equity plans,

(i) directing the board or chief of police to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (2);

(c) conducting investigations with respect to municipal police matters under section 25;

(d) conducting inquiries into matters relating to crime and law enforcement under section 26;

(e) inquiring into any matter regarding the designation of a municipality under subsection 4 (7) (police services in villages and townships) and, after a hearing, making recommendations to the Solicitor General;

(f) hearing and disposing of appeals by members of police forces in accordance with Part V.

Powers of Commission in hearings, investigations and inquiries R.S.O. 1980, c. 411

(2) When the Commission conducts a hearing, investigation or inquiry, it has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the proceeding as if it were an inquiry under that Act.

Counsel

(3) At the Commission's request, the Solicitor General may appoint counsel to assist the Commission in a hearing, investigation or inquiry.

Sanctions for failure to comply with prescribed standards of police services

23.—(1) If the Commission is of the opinion, after holding a hearing, that a board or municipal police force has flagrantly or repeatedly failed to comply with prescribed standards of police services, the Commission may take any of the following measures or any combination of them:

1. Suspending the chief of police, one or more members of the board, or the whole board, for a specified period.

2. Removing the chief of police, one or more members of the board, or the whole board from office.

3. Disbanding the police force and requiring the Ontario Provincial Police to provide police services for the municipality.

4. Appointing an administrator to perform specified functions with respect to police matters in the municipality for a specified period.

Sanctions for failure to comply with requirements respecting employment equity plans

(2) If the Commission is of the opinion, after holding a hearing, that a board or municipal chief of police has failed to comply with the requirements of this Act and the regulations respecting employment equity plans, the Commission may

take any of the following measures or any combination of them:

1. Suspending the chief of police, one or more members of the board, or the whole board, for a specified period.

2. Removing the chief of police, one or more members of the board, or the whole board from office.

3. Appointing an administrator to perform specified functions with respect to employment equity, recruitment and promotion in the police force for a specified period.

(2a) If the Commission suspends the chief of police or members of the board who are entitled to remuneration under subsection 27 (12), it shall specify whether the suspension is with or without pay. Suspension with or without pay

(3) The Commission shall not take measures under subsection (2) with respect to the failure of a chief of police to meet specific goals or timetables contained in the employment equity plan if the Commission finds that the chief of police has made all reasonable efforts to meet them. Defence

(4) An administrator appointed under paragraph 4 of subsection (1) or paragraph 3 of subsection (2) has all the powers necessary for the performance of his or her functions. Powers of administrator

(5) If the Commission suspends or removes the chief of police, it may appoint a person to replace him or her. Replacement of chief of police

(6) The parties to the hearing are the chief of police, the board, any member of the board that the Commission designates and, if the Commission so directs, the association or associations representing members of the police force. Parties

(7) The Commission may add parties at any stage of the hearing on the conditions it considers proper. Idem

(8) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member. Replacement of suspended or removed member

(9) A member who has been removed shall not subsequently be a member of any board, and a member who has been suspended shall not be reappointed during the period of suspension. Consequences of removal and suspension

Appeal to Divisional Court

(10) A party may appeal to the Divisional Court within thirty days of receiving notice of the Commission's decision.

Grounds for appeal

(11) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Idem

(12) An appeal may also be made from a finding that a chief of police has made all reasonable efforts to meet the specific goals and timetables contained in an employment equity plan.

Appeal by non-parties

(13) If the consent of the Attorney General is sought within thirty days of the Commission's decision and is given, a person who is not a party may appeal under subsection (12) as if he or she were a party.

Emergency, interim order

24.—(1) The Commission may make an interim order under subsection 23 (1), without notice and without holding a hearing, if it is of the opinion that an emergency exists and that the interim order is necessary in the public interest.

Restriction

(2) The Commission shall not remove a person from office or disband a police force by means of an interim order.

Investigations

25.—(1) The Commission may, at the Solicitor General's request, at a municipal council's request or of its own motion, investigate, inquire into and report on,

(a) the conduct or the performance of duties of a municipal chief of police or other municipal police officer, an auxiliary member of a municipal police force, a special constable, a by-law enforcement officer or a member of a board;

(b) the administration of a municipal police force;

(c) the manner in which police services are provided for a municipality;

(d) the police needs of a municipality.

Cost of investigation

(2) The cost of an investigation conducted at a council's request shall be paid by the municipality, unless the Solicitor General directs otherwise.

Report

(3) The Commission shall communicate its report of an investigation under subsection (1) to the Solicitor General at his or her request and to the board or council at its request, and may communicate the report to any other person as the Commission considers advisable.

Penalties, member of police force

(4) If the Commission concludes after a hearing that a member of a police force is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may direct that the member be,

(a) demoted as the Commission specifies, permanently or for a specified period;

(b) dismissed; or

(c) retired, if the member is entitled to retire.

Penalties, member of board

(5) If the Commission concludes, after a hearing, that a member of a board is guilty of misconduct or is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may remove or suspend the member.

Appeal to Divisional Court

(6) A member of a police force or of a board on whom a penalty is imposed under subsection (4) or (5) may appeal to the Divisional Court within thirty days of receiving notice of the Commission's decision.

Grounds for appeal

(7) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Replacement of suspended or removed member

(8) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member.

Consequences of removal and suspension

(9) A member who has been removed shall not subsequently be a member of any board, and a member who has been suspended shall not be reappointed during the period of suspension.

Inquiries

26.—(1) The Lieutenant Governor in Council may direct the Commission to inquire into and report to the Lieutenant Governor in Council on any matter relating to crime or law enforcement, and shall define the scope of the inquiry in the direction.

Application of R.S.O. 1980, c. 411, s. 6

(2) Section 6 (stated case) of the *Public Inquiries Act* applies to inquiries conducted under this section.

Rights of witnesses

(3) Witnesses at inquiries conducted under this section have the right to retain and instruct counsel and all the other rights of witnesses in civil courts.

Offence

(4) Any person who knowingly discloses, without the Commission's consent, evidence taken in private at an inquiry conducted under this section or information likely to identify the witness is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

PART III

MUNICIPAL POLICE SERVICES BOARDS

Police services boards

27.—(1) There shall be a police services board for every municipality that maintains a police force.

Boards of commissioners of police continued as police services boards

R.S.O. 1980, c. 381

(2) Every board of commissioners of police constituted or continued under the *Police Act* or any other Act and in existence on the day this Act comes into force is continued as a police services board.

Name

(3) A board shall be known as "*(insert name of municipality)* Police Services Board".

Three-member boards in smaller municipalities

R.S.O. 1980, c. 31

(4) The board of a municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* does not exceed 25,000 shall consist of,

(a) the head of the municipal council, or another council member appointed by resolution of the council; and

(b) two persons appointed by the Lieutenant Governor in Council.

Five-member boards in larger municipalities

(5) The board of a municipality, other than a regional or metropolitan municipality, whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 25,000 shall consist of,

(a) the head of the municipal council, or another council member appointed by resolution of the council;

(b) one person appointed by resolution of the council; and

(c) three persons appointed by the Lieutenant Governor in Council.

(6) The council of a municipality to which subsection (4) would otherwise apply may determine, by resolution, that the composition of its board shall be as described in subsection (5). Smaller municipalities, option to expand board

(7) A resolution passed under clause 8 (2a) (b) of the *Police Act* before the day this Act comes into force shall be deemed to have been passed under subsection (6). Transition R.S.O. 1980, c. 381

(8) The board of a regional or metropolitan municipality shall consist of, Regional and metropolitan municipalities

(a) two council members appointed by resolution of the municipal council; and

(b) three persons appointed by the Lieutenant Governor in Council.

(9) The council of a regional or metropolitan municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 300,000 may apply to the Lieutenant Governor in Council for an increase in the size of its board; if the Lieutenant Governor in Council approves the application, the board shall consist of, Seven-member boards in certain circumstances R.S.O. 1980, c. 31

(a) the head of the council, or another council member appointed by resolution of the council;

(b) two council members appointed by resolution of the council; and

(c) four persons appointed by the Lieutenant Governor in Council.

(10) If the position of a member appointed by the Lieutenant Governor in Council becomes vacant, the Solicitor General may appoint a replacement to act until the Lieutenant Governor in Council makes a new appointment. Vacancies

(11) If the position of a member who is appointed by a municipal council or holds office by virtue of being the head of a municipal council becomes vacant, the board shall notify the council, which shall forthwith appoint a replacement. Idem

(12) The council shall pay the members of the board who are appointed by the Lieutenant Governor in Council or Solicitor General remuneration that is at least equal to the prescribed amount. Remuneration

Judges and justices of the peace ineligible

(13) No judge or justice of the peace shall be appointed as a member of a board.

Transition, judges and justices of the peace

(14) A judge or justice of the peace who is a member of a board on the day this Act comes into force may continue to be a member until the third anniversary of that day.

Transition, municipalities without boards

(15) In the case of a municipality that is required by subsection (1) to have a police services board and that does not, on the day this Act comes into force, have a board of commissioners of police, the following rules apply:

1. Subsection (1) does not apply to the municipality until the first anniversary of the coming into force of this Act.

2. Until subsection (1) applies to the municipality, the council shall perform the duties and may exercise the powers that this Act imposes and confers on police services boards.

Election of chair

28. The members of a board shall elect a chair at the board's first meeting in each year.

Protection from personal liability

29.—(1) No action or other proceeding for damages shall be instituted against a member of a board for any act done in good faith in the execution or intended execution of his or her duty or for any alleged neglect or default in the execution in good faith of that duty.

Board's liability

(2) Subsection (1) does not relieve a board of liability for a member's acts or omissions, and the board is liable as if that subsection had not been enacted and as if the member were the board's employee.

Board may contract, sue and be sued

30.—(1) A board may contract, sue and be sued in its own name.

Members not liable for board's contracts

(2) The members of a board are not personally liable for the board's contracts.

Responsibilities of boards

31.—(1) A board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

(a) appoint the members of the municipal police force;

(b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;

(c) establish policies for the effective management of the police force;

(d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;

(e) direct the chief of police and monitor his or her performance;

(f) establish an employment equity plan in accordance with section 48 and the regulations, review its implementation by the chief of police and receive regular reports from him or her on that subject;

(g) receive regular reports from the chief of police on disclosures and decisions made under section 48a (secondary activities);

(h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;

(i) establish guidelines for the administration by the chief of police of the public complaints system under Part VI;

(j) review the administration by the chief of police of the public complaints system and receive regular reports from him or her on that subject.

Members of police force under board's jurisdiction

(2) The members of the police force, whether they were appointed by the board or not, are under the board's jurisdiction.

Restriction

(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force.

Idem

(3a) The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

Training of board members

(4) The board shall ensure that its members undergo any training that the Solicitor General may provide or require.

Rules re management of police force

(5) The board may, by by-law, make rules for the effective management of the police force.

Guidelines re secondary activities

(6) The board may establish guidelines consistent with section 48a for police officers' disclosure of secondary activities to the chief of police and for the decisions of the chief of police under subsection 48a (4).

Oath of office

32. Before entering on the duties of office, a member of a board shall take an oath or affirmation of office in the prescribed form.

Agreement to constitute joint board R.S.O. 1980, c. 31

33.—(1) Despite any special Act, two or more municipalities whose combined population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 5,000 may enter into an agreement to constitute a joint board.

Idem

(2) The agreement must be authorized by by-laws of the councils of the participating municipalities and requires the consent of their boards.

Composition of board

(3) The joint board shall consist of,

(a) the heads of the councils of the participating municipalities; and

(b) other members appointed by the Lieutenant Governor in Council.

Application of Act to joint boards

(4) The provisions of this Act that apply to boards also apply with necessary modifications to joint boards.

Delegation

34. A board may delegate to two or more of its members any authority conferred on it by this Act, except,

(a) the authority to hear the appeals of police officers found guilty of misconduct under Part V, which must be exercised by a quorum; and

(b) the authority to bargain under Part VIII, which the board may delegate to one or more members.

Meetings

35.—(1) The board shall hold at least four meetings each year.

Quorum

(2) A majority of the members of the board constitutes a quorum.

Proceedings open to the public

(3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that, Exception

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

36. A document purporting to be a by-law of the board signed by a member or purporting to be a copy of such a by-law certified correct by a member is admissible in evidence without proof of the signature or authority of the person signing. Admissibility of documents

37. A board has the same power to summon witnesses, enforce their attendance, examine them on oath and compel them to give evidence, in connection with the board's functions, as a court of law has in civil cases. Power to summon witnesses

38. A municipal police force shall consist of a chief of police and such other police officers and other employees as the board considers adequate, and shall be provided with the equipment and facilities that the board considers adequate. Municipal police force

39.—(1) Each year, the board shall submit to the municipal council or to each council responsible for maintaining the police force, as the case may be, its estimates for the year. Estimates

(1a) The estimates shall be submitted at least one month before the beginning of the fiscal year of the municipality or municipalities, as the case may be; if they are to be submitted to municipalities whose fiscal years begin on different dates, they shall be submitted to all the councils at least one month before the earliest date. Time

(2) The estimates shall show, separately, the amounts that will be required, Idem

(a) to maintain the police force and provide it with equipment and facilities; and

(b) to pay the expenses of the board's operation other than the remuneration of board members.

Commission hearing in case of disagreement

(3) If the council does not approve the board's estimates or disagrees with the board on the number of members of the police force that is adequate or the equipment and facilities that are adequate, the Commission shall determine the question after a hearing.

Reduction or abolition of police force

40.—(1) A board may terminate the employment of a member of the police force for the purpose of abolishing the police force or reducing its size if the Commission consents and if the abolition or reduction does not contravene this Act.

Criteria for Commission's consent

(2) The Commission shall consent to the termination of the employment of a member of the police force under subsection (1) only if the member and the board have made an agreement dealing with severance pay or agreed to submit the matter to arbitration.

Arbitration

(3) Section 123 applies to the arbitration with necessary modifications.

PART IV

POLICE OFFICERS AND OTHER POLICE STAFF

CHIEF OF POLICE

Duties of chief of police

41.—(1) The duties of a chief of police include,

(a) in the case of a municipal police force, administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31 (1);

(b) ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force;

(c) ensuring that the police force provides community-oriented police services;

(d) administering discipline in accordance with Part V;

(e) administering the public complaints system under Part VI;

(f) implementing the employment equity plan established under section 48 and the regulations;

(g) in the case of a municipal police force, reporting to the board at regular intervals on public complaints and on the implementation of the employment equity plan.

Chief of police reports to board

(2) The chief of police reports to the board and shall obey its lawful orders and directions.

POLICE OFFICERS

Duties of police officer

42.—(1) The duties of a police officer include,

(a) preserving the peace;

(b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;

(c) assisting victims of crime;

(d) apprehending criminals and other offenders and others who may lawfully be taken into custody;

(e) laying charges and participating in prosecutions;

(f) executing warrants that are to be executed by police officers and performing related duties;

(g) performing the lawful duties that the chief of police assigns;

(h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;

(i) completing the prescribed training.

Power to act throughout Ontario

(2) A police officer has authority to act as such throughout Ontario.

Powers and duties of common law constable

(3) A police officer has the powers and duties ascribed to a constable at common law.

Criteria for hiring

43.—(1) No person shall be appointed as a police officer unless he or she,

(a) is a Canadian citizen or a permanent resident of Canada;

(b) is at least eighteen years of age;

(c) is physically and mentally able to perform the duties of the position, having regard to his or her own safety and the safety of members of the public;

(d) is of good moral character and habits; and

(e) has successfully completed at least four years of secondary school education or its equivalent.

Idem

(2) A candidate for appointment as a police officer shall provide any relevant information or material that is lawfully requested in connection with his or her application.

Probationary period

44.—(1) A municipal police officer's probationary period begins on the day he or she is appointed and ends on the later of,

(a) the first anniversary of the day of appointment;

(b) the first anniversary of the day the police officer completes an initial period of training at the Ontario Police College.

Time for completing initial training

(1a) The police officer shall complete the initial period of training within six months of the day of appointment.

Termination of employment during probationary period

(2) A board may terminate a police officer's employment at any time during his or her probationary period but, before doing so, shall give the police officer reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing, as the board may determine.

Only one probationary period

(3) Subsections (1), (1a) and (2) do not apply to a police officer who has completed a probationary period with another municipal police force.

Oaths of office and secrecy

45. A person appointed to be a police officer shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

Political activity

45a. No municipal police officer shall engage in political activity, except as the regulations permit.

47.—(1) Subject to subsection (2), if a municipal police officer becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the board shall accommodate his or her needs in accordance with the *Human Rights Code, 1981*. Accommodation of disabled police officer's needs 1981, c. 53

(2) If the police officer's needs cannot be accommodated without undue hardship on the board, it may discharge the police officer, or retire the police officer if entitled to retire, after holding a hearing and receiving the evidence of two legally qualified medical practitioners respecting the police officer's incapacity. Undue hardship

(3) Subject to subsection (4), if a member of the Ontario Provincial Police becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the Commissioner shall accommodate the member's needs in accordance with the *Human Rights Code, 1981*. Idem, O.P.P.

(4) If the member's needs cannot be accommodated without undue hardship on the Crown in right of Ontario, he or she may be discharged, or retired if entitled to retire, after the Commissioner has held a hearing and received the evidence of two legally qualified medical practitioners respecting the member's incapacity. Idem

(5) A member of a police force who is discharged or retired under subsection (2) or (4) may appeal to the Commission by serving a written notice on the Commission and on the board or the Commissioner, as the case may be, within thirty days of receiving notice of the decision. Appeal

(6) The Commission may confirm, alter or revoke the decision or may require the board or Commissioner, as the case may be, to rehear the matter. Powers of Commission

(7) The Commission shall promptly give written notice of its decision, with reasons, to the appellant and to the board or Commissioner, as the case may be. Decision

(8) No member of the Commission shall participate in the decision unless he or she was present throughout the hearing of the appeal and, except with the consent of the appellant, no decision of the Commission shall be given unless all members who were present throughout the hearing participate in the decision. Participation of members of Commission

MEMBERS OF POLICE FORCES

Employment equity plans

48.—(1) Every police force shall have an employment equity plan prepared in accordance with this section and the regulations.

Contents of plan

(2) An employment equity plan shall provide for,

(a) the elimination of systemic barriers to the recruitment and promotion of persons who are members of prescribed groups;

(b) the implementation of positive measures with respect to the recruitment and promotion of those persons, so as to make the police force more representative of the community or communities it serves; and

(c) specific goals and timetables with respect to the elimination of systemic barriers, the implementation of positive measures and the composition of the police force.

Board to prepare plan for municipal police force

(3) In the case of a municipal police force, the board shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Commissioner to prepare plan for O.P.P.

(4) In the case of the Ontario Provincial Police, the Commissioner shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Solicitor General

(5) Before approving the employment equity plan, the Solicitor General may require that changes be made to it.

Restrictions on secondary activities

48a.—(1) A member of a police force shall not engage in any activity,

(a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;

(b) that places him or her in a position of conflict of interest, or is likely to do so;

(c) that would otherwise constitute full-time employment for another person; or

(d) in which he or she has an advantage derived from employment as a member of a police force.

Exception, paid duty

(2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force.

Disclosure to chief of police

(3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police.

Decision of chief of police

(4) The chief of police shall decide whether the member is permitted to engage in the activity and the member shall comply with that decision.

Liability for torts

50.—(1) The board or the Crown in right of Ontario, as the case may be, is liable in respect of torts committed by members of the police force in the course of their employment.

Indemnification of member of municipal police force

(2) The board may, in accordance with the guidelines established under clause 31 (1) (h), indemnify a member of the police force for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of a proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.

Council responsible for board's liabilities

(3) The council is responsible for the liabilities incurred by the board under subsections (1) and (2).

Indemnification of member of O.P.P.

(4) The Treasurer of Ontario may indemnify, out of the Consolidated Revenue Fund, a member of the Ontario Provincial Police for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of a proceeding in which the member's manner of execution of the duties of his or her

employment was an issue, if the member is found to have acted in good faith.

Police cadets

51.—(1) With the board's approval, a municipal chief of police may appoint persons as police cadets to undergo training.

Idem

(2) A police cadet is a member of the municipal police force.

Auxiliary members of municipal police force

52.—(1) With the Commission's approval, a board may appoint auxiliary members of the police force.

Notice of suspension or termination

(2) If the board suspends or terminates the appointment of an auxiliary member of the police force, it shall promptly give the Commission written notice of the suspension or termination.

Auxiliary members of O.P.P.

(3) The Commissioner may appoint auxiliary members of the Ontario Provincial Police.

Authority of auxiliary members of police force

(4) An auxiliary member of a police force has the authority of a police officer if he or she is accompanied or supervised by a police officer and is authorized to perform police duties by the chief of police.

Restriction

(4a) The chief of police may authorize an auxiliary member of the police force to perform police duties only in special circumstances, including an emergency, that the police officers of the police force are not sufficiently numerous to deal with.

Oaths of office and secrecy

(5) A person appointed to be an auxiliary member of a police force shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

SPECIAL CONSTABLES

Special constables appointed by board

53.—(1) With the Commission's approval, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient.

Special constables appointed by Commissioner

(2) With the Commission's approval, the Commissioner may appoint a special constable to act for the period, area and purpose that the Commissioner considers expedient.

Powers of police officer

(3) The appointment of a special constable may confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment.

(3a) A special constable shall not be employed by a police force to perform, on a full-time and permanent basis, all the usual duties of a police officer. Restriction

(4) The power to appoint a special constable includes the power to suspend or terminate the appointment, but if a board or the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission. Suspension or termination of appointment

(5) The Commission also has power to suspend or terminate the appointment of a special constable. Commission

(6) Before a special constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the board, Commissioner or Commission, as the case may be, may determine. Information and opportunity to reply

(7) A person appointed to be a special constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form. Oaths of office and secrecy

FIRST NATIONS CONSTABLES

54.—(1) With the Commission's approval and with the approval of the police governing authority or band council of a reserve as defined in the *Indian Act* (Canada), the Commissioner may appoint a First Nations Constable to perform specified duties in connection with the reserve. First Nations Constables

R.S.C. 1985,c.I-5

(2) The appointment of a First Nations Constable may confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment. Powers of police officer

(3) The power to appoint a First Nations Constable includes the power to suspend or terminate the appointment, but if the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission. Suspension or termination of appointment

(4) The Commission also has power to suspend or terminate the appointment of a First Nations Constable. Commission

(5) Before a First Nations Constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the Commissioner or Commission, as the case may be, may determine. Information and opportunity to reply

Oaths of office and secrecy

(6) A person appointed to be a First Nations Constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

EMERGENCIES

Emergencies

55.—(1) In an emergency, the Solicitor General may make an agreement with the Crown in right of Canada or of another province or with any of its agencies for the provision of police services.

Authority to act as police officers

(2) The agreement authorizes all peace officers to whom it relates to act as police officers in the area to which the agreement relates.

Application of R.S.O. 1980, c. 539

(3) For the purpose of the *Workers' Compensation Act*, the relationship between a member of a police force and the body that employs him or her continues as if an agreement had not been made under this section.

Expense of calling out Canadian Forces

(4) If the services of the Canadian Forces are provided under this section, the municipality in whose territory the services are required shall pay all the related expenses.

Resignation during emergency prohibited R.S.C. 1985, c. N-5

(5) Subject to sections 33 and 34 of the *National Defence Act* (Canada), while an agreement made under this section is in force, no member of a police force that has jurisdiction in the area to which the agreement relates shall resign without the consent of the chief of police.

PART V

DISCIPLINARY PROCEEDINGS

Misconduct

56. A police officer is guilty of misconduct if he or she,

(a) commits an offence described in a prescribed code of conduct;

(b) contravenes section 45a (political activity);

(c) engages in an activity that contravenes subsection 48a (1) (secondary activities) without the permission of his or her chief of police, being aware that the activity may contravene that subsection;

(d) contravenes subsection 55 (5) (resignation during emergency);

(e) contravenes section 57 (inducing misconduct, withholding services);

(f) contravenes subsection 95 (4) (photography at hearing);

(g) contravenes subsection 99 (6) (obstructing Police Complaints Commissioner);

(h) contravenes subsection 107 (1) (confidentiality);

(i) contravenes section 116 (trade union membership);

(j) deals with personal property, other than money or a firearm, in a manner that is not consistent with section 130;

(k) deals with money in a manner that is not consistent with section 131;

(l) deals with a firearm in a manner that is not consistent with section 132;

(m) contravenes a regulation made under paragraph 15 (equipment), 16 (use of force), 17 (standards of dress, police uniforms) 20 (police pursuits) or 21 (records) of subsection 133 (1).

Inducing misconduct

57.—(1) No person, including a member of a police force, shall,

(a) induce or attempt to induce a member of a police force to withhold his or her services; or

(b) induce or attempt to induce a police officer to commit misconduct.

Withholding services

(2) No member of a police force shall withhold his or her services.

Offence

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Consent of Solicitor General

(4) No prosecution shall be instituted under this section without the consent of the Solicitor General.

Chief to investigate misconduct

58.—(1) Any apparent or alleged misconduct by a police officer shall be investigated by his or her chief of police.

Idem

(2) The chief of police may investigate the matter by means of a hearing under section 60 or may investigate it without holding a hearing.

Effect of complaint

(3) When a complaint is made under Part VI with respect to apparent or alleged misconduct by a police officer, the following rules apply:

1. The complaint shall be dealt with in accordance with Part VI, and recourse shall be had to this Part only as Part VI permits.

2. Any investigation of the matter under this Part, including a hearing under section 60, is suspended as soon as the chief of police becomes aware that a complaint has been made.

Procedure if no hearing held

59.—(1) If the chief of police investigates apparent or alleged misconduct without holding a hearing and concludes that the police officer is guilty of misconduct, the following rules apply:

1. The chief of police shall provide the police officer with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

2. The chief of police may then admonish the police officer and may cause particulars of the matter, of the action taken and of the police officer's reply to be recorded in his or her employment record.

3. If the police officer refuses to accept the admonition, the chief of police shall not cause particulars to be recorded without first holding a hearing.

Expungement

(2) Particulars entered in the police officer's employment record under paragraph 2 of subsection (1) shall be expunged from the record two years after being entered if during that time no other entries concerning misconduct have been made in the record under this Part or Part VI.

Agreement

(3) Nothing in this section affects agreements between boards and police officers or associations that permit other penalties than admonition to be administered, if the police officer in question consents, without a hearing under section 60.

Hearing

60.—(1) A chief of police may hold a hearing to determine whether a police officer belonging to his or her police force is guilty of misconduct.

Prosecutor

(2) The chief of police shall designate to be prosecutor at the hearing,

(a) a police officer of the rank of sergeant or higher;

(b) if there is none of that rank, a police officer of a rank equal to or higher than that of the police officer who is the subject of the hearing; or

(c) a legal counsel.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Examination of evidence

(4) Before the hearing, the police officer shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence.

Idem

(5) If the hearing is being conducted as a result of a complaint made under Part VI, the complainant shall likewise be given an opportunity to examine evidence and reports before the hearing.

Police officer not required to give evidence
R.S.O. 1980, c. 484

(6) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(7) In the case of a hearing that is being conducted as a result of a complaint made under Part VI, no statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Release of exhibits

(8) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

Stay

(9) If the police officer is charged with an offence under a law of Canada or of a province, the hearing shall continue unless the chief of police, after consulting with the Crown

Attorney, is of the opinion that it should be stayed until the conclusion of the court proceedings.

Six-month limitation period

(10) If six months have elapsed since the facts on which an allegation of misconduct is based first came to the attention of the chief of police, no notice of hearing shall be served without leave of the board.

Penalties

61.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may,

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

(f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

Calculation

(1a) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day.

Idem

(2) Instead of or in addition to a penalty described in subsection (1), the chief of police may reprimand the police officer.

Dismissal and demotion

(3) The chief of police shall not impose the penalties of dismissal or demotion unless the notice of hearing or a subsequent notice served on the police officer indicated that they might be imposed if the misconduct were proved on clear and convincing evidence.

Notice of decision

(4) The chief of police shall promptly give written notice of the decision, with reasons, to the police officer and, in the case of a municipal police force, to the board.

Idem

(5) If the hearing was conducted as a result of a complaint made under Part VI, the chief of police shall also give notice

of the decision, with reasons, to the complainant and to the Police Complaints Commissioner.

Police officer's employment record

(6) Unless misconduct is proved on clear and convincing evidence, no reference to the allegations or the hearing shall be placed in the police officer's employment record and the matter shall not be taken into account for any purpose related to his or her employment.

Misconduct by municipal chief of police

62.—(1) A board may hold a hearing to determine whether the chief of police is guilty of misconduct, and this Part applies with necessary modifications.

Commission hearing

(2) The chief of police may, by serving a notice to that effect on the board and the Commission, require that the Commission hold the hearing instead of the board.

Appeal to board

63.—(1) A municipal police officer on whom a penalty is imposed under section 61 may appeal to the board by serving a notice of appeal on the board and the chief of police within fifteen days of receiving notice of the decision.

Hearing

(2) The board shall hear the appeal on the record, but may receive new or additional evidence as it considers just.

Powers of board

(3) The board may confirm, alter or revoke the decision or may require the chief of police to rehear the matter.

Board's decision

(4) The board shall promptly give written notice of its decision, with reasons, to the chief of police and the police officer.

Participation of members

(5) No member of the board shall participate in the decision unless he or she was present throughout the hearing of the appeal and, except with the police officer's consent, no decision of the board shall be given unless all members who were present throughout the hearing participate in the decision.

Members not to communicate in relation to subject-matter of appeal

(5a) The members of the board who participate in the decision shall not communicate directly or indirectly in relation to the subject-matter of the appeal with any person or person's counsel or representative, unless the police officer and the chief of police receive notice and have an opportunity to participate.

Exception

(5b) However, the board may seek legal advice from an adviser independent of the police officer and the chief of police, and in that case the nature of the advice shall be communicated to them so that they may make submissions as to the law.

Further appeal to Commission

(6) The police officer may appeal to the Commission from the board's decision by serving a notice of appeal on the Commission, the board and the chief of police within thirty days of receiving notice of the decision.

O.P.P., appeal to Commission from Commissioner's decision

64. A member of the Ontario Provincial Police on whom a penalty is imposed under section 61 may appeal to the Commission by serving a written notice on the Commission and the Commissioner within thirty days of receiving notice of the decision.

Exception in case of public complaint

65. If the hearing was conducted as a result of a complaint made under Part VI, sections 63 and 64 do not apply and the police officer may only appeal in accordance with that Part.

Appeals to Commission

66. Subsections 63 (2) to (5b) apply to appeals heard by the Commission as if references to the board were references to the Commission and, in the case of an appeal from a board's decision, as if references to the chief of police were references to the board.

Extension of time for appeals

67. The board or Commission may grant an extension of the time provided for giving it a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Delegation

68. A chief of police may authorize any member of the police force to exercise any power or perform any duty of the chief of police referred to in this Part, subject to the following rules:

1. A hearing under section 60 shall be conducted by a police officer of the rank of inspector or higher.

2. A police officer from another police force who meets the requirements of paragraph 1 may conduct the hearing, with the approval of his or her chief of police.

3. The measures referred to in subsection 59 (1) (procedure if no hearing is held) shall be taken by a police officer of the rank of inspector or higher.

Notice

69.—(1) A notice required to be given under this Part is sufficiently given if delivered personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, act-

ing in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Suspension

70.—(1) If a police officer is suspected of or charged with an offence under a law of Canada or of a province or is suspected of misconduct, the chief of police may suspend him or her from duty with pay.

Revocation and reimposition of suspension

(2) The chief of police may revoke the suspension and later reimpose it, repeatedly if necessary, as he or she considers appropriate.

Duration of suspension

(3) Unless the chief of police revokes the suspension, it shall continue until the final disposition of the proceeding in which the police officer's conduct is at issue.

Conditions of suspension

(4) While suspended, the police officer shall not exercise any of the powers vested in him or her as a police officer or wear or use clothing or equipment that was issued to him or her in that capacity.

Suspension without pay

(5) If a police officer is convicted of an offence and sentenced to a term of imprisonment, the chief of police may suspend him or her without pay, even if the conviction or sentence is under appeal.

Other employment during period of suspension

71.—(1) A police officer who is suspended under section 70 or under clause 61 (1) (d) or 96 (1) (d) (penalties) may engage in other employment during the period of suspension, and sections 46 (secondary activities) and 116 (trade union membership prohibited) do not apply.

Earnings from other employment

(2) If the police officer is suspended with pay, the pay for the period of suspension shall be reduced by the amount that he or she earns from other employment during that period.

PART VI

PUBLIC COMPLAINTS

Definitions

72.—(1) In this Part,

"bureau" means the public complaints investigation bureau of a police force;

"Commissioner" means the Police Complaints Commissioner appointed under section 98.

Police officer

(2) In this Part, unless the context indicates otherwise, a reference to a police officer is a reference to the police officer who is the subject of a complaint.

Attorney General

73. This Part shall be administered by the Attorney General.

Application of Part

74. Complaints by members of the public about the conduct of police officers shall be dealt with in accordance with this Part.

Bureau

75.—(1) Every chief of police shall establish and maintain a public complaints investigation bureau.

Staff

(2) The chief of police shall ensure that the bureau is supplied with sufficient staff to perform its duties effectively.

Small police forces

(3) If the police force has fewer than twenty police officers, the bureau of another police force may, under an agreement made in accordance with section 7 (municipal agreements for sharing police services) or 10 (municipal agreements for provision of police services by O.P.P.), act as the first-named police force's bureau as well; in that case, subsections (1) and (2) do not apply.

INITIAL HANDLING OF COMPLAINT

Complaint by member of public

76.—(1) A member of the public may make a complaint about the conduct of a police officer, orally or in writing,

(a) at the bureau of the police force to which the complaint relates, or at a station or detachment of that police force; or

(b) at an office of the Commissioner; or

(c) at any bureau, police station or detachment.

Recording of complaint

(2) The person who receives the complaint shall record it on a form provided by the Commissioner and shall give the person who makes the complaint a copy of the complaint as recorded.

Information

(3) The person who makes the complaint shall also be given a statement, in a form provided by the Commissioner, that sets out the procedures followed in dealing with a complaint and describes the rights of a complainant.

Preservation of evidence, preliminary investigation

(4) The person on duty who is in charge of a place when a complaint is received shall,

(a) take all reasonable steps to ensure that evidence that might otherwise be lost is secured immediately;

(b) if he or she considers it appropriate, ensure that a preliminary investigation is conducted immediately; and

(c) ensure that a report on the evidence and on the preliminary investigation, if any, is forthwith prepared and attached to the complaint.

Copies of complaint

(5) The person who records the complaint shall forthwith send copies of it,

(a) to the bureau, the chief of police and the Commissioner, in the case of a complaint made at a station or detachment of the police force to which it relates;

(b) to the chief of police and the Commissioner, in the case of a complaint made at the bureau of the police force to which it relates;

(c) to the bureau and the chief of police of the police force to which it relates, in the case of a complaint made at an office of the Commissioner;

(d) to the Commissioner, in the case of a complaint made at a bureau, station or detachment of a different police force than the one to which it relates.

Complaint made to another police force

(6) If a complaint was made at a bureau, station or detachment of a different police force than the one to which it relates, the Commissioner shall forthwith send copies of the complaint and of any report prepared under subsection (4) to the appropriate bureau.

Complaint made more than six months after incident

(7) A complaint that is made more than six months after the incident to which it relates shall be further dealt with under this Part only if the Commissioner so directs.

Complaint by Commissioner

77.—(1) In exceptional circumstances, the Attorney General may direct the Commissioner to make a complaint about the conduct of a police officer.

Recording of complaint, copies

(2) The Commissioner shall cause the complaint to be recorded and shall send copies to the bureau and the chief of police of the force to which it relates.

Complainant

(3) The Commissioner is the complainant in the case of a complaint made under this section.

Non-application of certain provisions

(4) Subsection 76 (7) and sections 79 (notice to potential complainant), 80 (classification of complaint), 81 (reclassification), 82 (informal resolution) and 84 (decision by chief of police re no further action) do not apply to complaints made under this section.

Notice to police officer

78.—(1) When the bureau receives a complaint, the person in charge shall forthwith give the police officer notice of the substance of the complaint, unless in the person's opinion to do so might prejudice the investigation.

Form

(2) The notice shall be written on a form provided by the Commissioner.

Notice to potential complainant

79.—(1) If the complaint is made by a person who was not directly affected by the incident and did not observe it, the Commissioner shall, as soon as possible after receiving the complaint, attempt to find the person who was directly affected by the incident or who observed it and send him or her a notice.

Idem

(2) The notice shall indicate that a complaint has been made, that the person is entitled to be the complainant in the matter and that the complaint will not be dealt with further unless he or she is the complainant.

Idem

(3) The notice shall also include information about the procedures followed in dealing with a complaint and the rights of a complainant.

No further action

(4) The complaint shall not be further dealt with under this Part if,

(a) no person who was directly affected by the incident or who observed it can be found; or

(b) the person to whom the Commissioner sends the notice does not, within thirty days of the date on which it is sent, file with the Commissioner a request to be the complainant in the matter.

Disciplinary proceeding

(5) However, if a disciplinary proceeding is commenced against the police officer in respect of the complaint, the chief of police shall notify the Commissioner of the proceeding and of its result, and the Commissioner shall then notify the person who made the complaint.

Reopening of matter

(6) If the person to whom the Commissioner sends the notice files a request to be the complainant in the matter after the thirty-day period referred to in subsection (4), the Commissioner may cause the matter to be reopened despite the late filing if he or she considers it advisable to do so.

Classification of complaint

80.—(1) When the bureau receives a complaint, the person in charge shall consider whether it relates to possible misconduct under section 56, to other matters or to both.

Idem

(2) If the person in charge is of the opinion that all or part of the complaint relates only to other matters than possible misconduct, he or she may, with the Commissioner's consent, classify the complaint or part as an inquiry.

Notice and investigation

(3) When all or part of a complaint has been classified as an inquiry, the person in charge shall forthwith notify the complainant and the police officer of the fact and may cause the inquiry to be investigated.

Response to complainant

(4) Not more than sixty days after the bureau receives the original complaint, the person in charge shall send the complainant a written response to the inquiry and shall also send the Commissioner a copy of the response, together with a summary of the results of any investigation.

Effect

(5) A complaint or part of a complaint that is classified as an inquiry and not reclassified as a complaint and that is the subject of a response under this section need not be dealt with further under this Part.

Reclassification

81.—(1) During the course of the investigation of an inquiry, if the person in charge concludes that all or part of it relates to possible misconduct, he or she may reclassify the inquiry or part as a complaint.

Idem

(2) After receiving a summary of the results of the investigation of an inquiry, the Commissioner may direct the person in charge to reclassify all or part of it as a complaint.

Notice

(3) The person in charge shall forthwith notify the complainant and the police officer of the reclassification, and shall also notify the Commissioner in the case of a reclassification under subsection (1).

Effect

(4) An inquiry or part of an inquiry that is reclassified as a complaint shall be dealt with as such under this Part.

INFORMAL RESOLUTION, WITHDRAWAL

Informal resolution by person in charge of bureau

82.—(1) If the complainant and the police officer consent, the complaint may be resolved informally by the person in charge of the bureau, before the chief of police gives notice of a decision under section 89, or by the Commissioner after that time.

Board's consent

(2) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, its consent is also required for an informal resolution.

Record

(3) When a complaint is resolved informally, the resolution shall be recorded on a form provided by the Commissioner and signed by the complainant and police officer.

Copies

(4) Copies of the record shall be provided to the complainant and the police officer, and to the Commissioner if the complaint was resolved by the person in charge of the bureau.

Commissioner's decision that complaint to continue

(5) If the Commissioner is of the opinion that the informal resolution is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the informal resolution.

Notice

(6) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

Withdrawal of complaint

83.—(1) The complainant may withdraw the complaint by giving a notice of withdrawal to the person in charge of the bureau, before the chief of police gives notice of a decision under section 89, or to the Commissioner after that time.

Idem, complaint made by Commissioner

(2) If the complaint was made under section 77, the Commissioner may withdraw it by giving a notice of withdrawal to the chief of police and a copy to the police officer; subsection (3) applies to the withdrawal but subsections (4) to (7) do not.

Board's consent

(3) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, it shall not be withdrawn without the board's consent.

Copies

(4) A copy of the notice of withdrawal shall be provided to the police officer, and to the Commissioner if the person in charge of the bureau received the notice.

Form

(5) The notice of withdrawal shall be written on a form provided by the Commissioner.

(6) If the Commissioner is of the opinion that the withdrawal is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the withdrawal. Commissioner's decision that complaint to continue

(7) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau. Notice

POWERS OF CHIEF OF POLICE

84.—(1) At any time before making a decision under section 89, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith. Decision re no further action

(2) The chief of police shall give the Commissioner, the complainant and the police officer notice of the decision. Notice

85.—(1) The chief of police may commence or continue a disciplinary proceeding against a police officer under Part V even if, Power to commence or continue disciplinary proceeding

(a) the complaint is withdrawn or is resolved informally; or

(b) the complaint is not to be further dealt with under this Part because of subsection 76 (7) (complaint filed more than six months after incident) or section 79 (complaint made by person not directly affected), or because of a decision by the chief of police under section 84.

(2) The chief of police shall give the Commissioner and the complainant notice of a decision to commence or continue a disciplinary proceeding in the circumstances described in subsection (1), and shall also give them notice of the results of the proceeding. Notice to Commissioner and complainant

INVESTIGATION OF COMPLAINT

86.—(1) The person in charge of the bureau shall cause an investigation to be conducted into the complaint in accordance with the prescribed procedures. Investigation

(2) During the course of the investigation, the person in charge shall send the Commissioner, the complainant and the Interim reports

police officer interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the bureau receives the complaint.

Exception

(4) If there are no new matters to report, the person in charge may send the Commissioner, the complainant and the police officer a notice to that effect instead of an interim report.

Idem

(5) The person in charge may withhold an interim report from the complainant or the police officer if, in his or her opinion, it is desirable to do so in order to avoid prejudicing the investigation, but in that case shall forthwith notify the Commissioner of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the person in charge shall cause a final report to be prepared and shall send copies of it to the Commissioner, the chief of police, the complainant and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the complainant, the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

Further investigation

(8) After receiving a final report, the Commissioner may require the chief of police to have the complaint investigated further.

Idem

(9) A summary of the results of any further investigation shall be sent to the persons who received the final report.

Forms

(10) The interim reports and final report shall be written on forms provided by the Commissioner.

Investigation by Commissioner

87.—(1) The Commissioner may conduct the investigation into the complaint, instead of the bureau,

(a) for any reason, after receiving the first interim report or after the thirty-day period referred to in subsection 86 (3) has expired;

(aa) if the complainant has commenced a court proceeding against the police officer, the police force or the chief of police, the police services board or the municipality (in the case of a municipal police force) or the Crown in right of Ontario (in the case of the Ontario Provincial Police) in connection with the incident to which the complaint relates;

(b) if the Commissioner has reasonable grounds to believe that undue delay or other unusual circumstances have affected the bureau's investigation or the preparation of its final report; or

(c) if the chief of police requests that the Commissioner conduct the investigation.

Duty of chief of police

(2) The chief of police, if he or she becomes aware that the complainant has commenced a court proceeding of the kind described in clause (1) (aa), shall forthwith notify the Commissioner of the fact.

Complaints concerning more than one police force

(3) If the complaint concerns more than one police force, the Commissioner shall conduct the investigation.

Notice

(4) When the Commissioner decides to conduct the investigation, he or she shall forthwith notify the chief of police, giving reasons in the case of a decision under clause (1) (a) or (b).

Effect on bureau

(5) When the Commissioner notifies the chief of police of a decision to conduct the investigation, the person in charge of the bureau shall forthwith end any investigation begun by the bureau and send to the Commissioner the evidence that has been gathered and the documents relating to the complaint.

Manner of conducting investigation

(6) Section 86 applies to the Commissioner's investigation, with necessary modifications, except that the Commissioner shall send the first interim report not more than thirty days after giving notice of the decision to conduct the investigation.

Investigation of complaint made by Commissioner

88.—(1) If the complaint was made under section 77, the Commissioner shall conduct the investigation in accordance with the prescribed procedures, and section 86 does not apply.

Interim reports

(2) The Commissioner shall send the police officer and the chief of police interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the Commissioner makes the complaint.

Exception

(4) If there are no new matters to report, the Commissioner may send the police officer and the chief of police a notice to that effect instead of an interim report.

Idem

(5) The Commissioner may withhold an interim report from the police officer if, in his or her opinion, it is desirable to do so to avoid prejudicing the investigation, but in that case shall forthwith notify the chief of police of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the Commissioner shall cause a final report to be prepared and shall send copies of it to the chief of police and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

DECISION BY CHIEF OF POLICE

Review of final report

89.—(1) The chief of police shall review the final report of the investigation of a complaint and may order further investigation if he or she considers it advisable.

Results of further investigation

(2) A summary of the results of any further investigation shall be sent to the persons who received the final report, and to the Commissioner if he or she conducted the original investigation.

Decision

(3) After reviewing the final report and the results of any further investigation, the chief of police shall,

(a) decide that no further action is necessary;

(b) admonish the police officer regarding the matter in accordance with subsection 59 (1);

(c) hold a disciplinary hearing under section 60;

(d) order that all or part of the complaint be the subject of a hearing by a board of inquiry; or

(e) cause an information to be laid against the police officer and refer the matter to the Crown Attorney for prosecution.

Idem

(4) If the chief of police decides to hold a disciplinary hearing under section 60 or orders a hearing by a board of inquiry, he or she may at the same time cause an information to be laid against the police officer.

Notice

(5) The chief of police shall give written notice of the decision to the Commissioner, the complainant and the police officer, with reasons in the case of a decision that no further action is necessary or a decision to admonish the police officer.

Idem

(5a) If the chief of police orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 102 (9).

Six-month time limit

(6) The chief of police shall give notice of the decision within six months of receiving the final report, unless the Commissioner grants an extension.

Deemed decision

(7) If the chief of police does not give notice of the decision within the six-month period and is not granted an extension, he or she shall be deemed to have decided that no further action is necessary.

REVIEW BY COMMISSIONER

Review by Commissioner

90.—(1) The Commissioner shall review the decision of the chief of police,

(a) at the complainant's or police officer's request, in the case of a decision under section 89 to admonish the police officer;

(b) at the complainant's request, in the case of a decision under section 89 that no further action is necessary;

(c) at the complainant's request, in the case of a decision under section 84 that the complaint or part of it not be further dealt with under this Part.

Idem

(2) The Commissioner shall, at the complainant's request, review the decision made in a disciplinary hearing under section 60 arising out of a complaint.

Thirty-day limit

(3) The complainant or police officer may request a review by the Commissioner only within thirty days of receiving notice of the decision, unless the Commissioner grants an extension.

Complaint made by Commissioner

(4) In the case of a complaint made under section 77, the Commissioner may review,

(a) a decision by the chief of police to admonish the police officer;

(b) a decision by the chief of police that no further action is necessary;

(c) the decision made in a disciplinary hearing under section 60 arising out of the complaint.

Commissioner's decision

(5) After conducting the review, the Commissioner may decide to take no further action, or may order a hearing by a board of inquiry if he or she believes it to be necessary in the public interest.

Notice

(6) The Commissioner shall forthwith give written notice of his or her decision, with reasons in the case of a decision to take no further action, to the chief of police, the complainant and the police officer.

Idem

(7) If the Commissioner orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 102 (9).

HEARING BY BOARD OF INQUIRY

Police officer's appeal to board

91.—(1) If a penalty is imposed on a police officer after a disciplinary hearing under section 60 that was conducted as a result of the complaint, he or she may appeal to a board of inquiry by serving a notice of appeal on the Commissioner, the chair of the panel and the chief of police within fifteen days of receiving notice of the decision.

Notice to complainant

(2) The Commissioner shall forthwith notify the complainant of the appeal.

Extension of time for appeal

(3) A member of the panel who was appointed on a recommendation made under subsection 102 (2) may grant an extension of the time provided for serving a notice of appeal,

before or after the expiry of the time, and may give directions in connection with the extension.

(4) The hearing of the police officer's appeal and any hearing ordered by the Commissioner under section 90 shall be combined. Appeal to be combined with other hearing

92.—(1) A board of inquiry shall be constituted, Constitution of board

(a) when the chief of police orders under section 89 that a matter be heard by a board of inquiry;

(b) when the Commissioner orders a hearing under section 90; and

(c) when a police officer appeals under section 91.

(2) The chair of the panel shall assign the following members of the panel to the board of inquiry, choosing members from the area where the complaint arose if possible: Assignment of members to board

1. As presiding officer, a member who was appointed on a recommendation made under subsection 102 (2).

2. A member who was appointed on a recommendation made under subsection 102 (3).

3. A member who was appointed on a recommendation made under subsection 102 (4).

(3) In the case of a complaint against a chief of police, the board of inquiry shall include, instead of a member of the panel who was appointed on a recommendation made under subsection 102 (3), a person, other than a police officer or a member of the Law Society of Upper Canada, appointed to the board of inquiry by the chair of the panel on the recommendation of the Ontario Association of Chiefs of Police. Complaint against chief of police

93.—(1) The hearing before the board of inquiry shall be a new hearing, unless it follows a disciplinary hearing under section 60; in that case it shall be on the record, but the board may receive new or additional evidence as it considers just. New hearing, exception

(2) If a board is constituted following a disciplinary hearing, the chief of police shall cause a record of the hearing to be prepared, at the Commissioner's expense if the Commissioner ordered the hearing before the board. Record of disciplinary hearing

Idem

(3) The record shall include a transcript and shall be accompanied by the documents, physical evidence and exhibits considered at the disciplinary hearing.

Parties

94.—(1) The parties to a hearing are,

(a) the complainant;

(b) the police officer;

(c) the Commissioner; and

(d) the chief of police, in the case of an appeal by the police officer.

Idem

(2) The board of inquiry may add parties at any stage of the hearing on the conditions it considers proper.

Carriage

(3) In the case of a hearing ordered by the chief of police or by the Commissioner, the Commissioner has carriage of the matter and, in the case of an appeal by the police officer, the police officer has carriage.

Statement of alleged misconduct

(4) In the case of a hearing ordered by the chief of police or by the Commissioner, the chief of police or the Commissioner, as the case may be, shall provide the parties with a concise statement of the allegations of misconduct to be heard.

Notice of hearing

95.—(1) The board of inquiry shall appoint a time for the hearing and notify the parties.

Examination of evidence

(2) Before the hearing, the police officer and the complainant shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence at the hearing.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Application of 1984, c. 11, s. 146

(4) Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to the hearing.

Police officer not required to give evidence

R.S.O. 1980, c. 484

(5) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

(6) No statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement. Limited admissibility of certain statements

(7) The board of inquiry shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or party's counsel or representative, unless all parties receive notice and have an opportunity to participate. Board not to communicate in relation to subject-matter of hearing

(8) However, the board may seek legal advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to the parties so that they may make submissions as to the law. Exception

(9) If it appears to be in the interests of justice, the board may direct that the board, the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose. Adjournment for view

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them. Release of exhibits

(11) If the police officer is charged with an offence under a law of Canada or of a province, the hearing shall continue unless the presiding officer, after consulting with the Crown Attorney, is of the opinion that it should be stayed until the conclusion of the court proceedings. Hearing not stayed

(12) No member of the board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument; except with the parties' consent, no decision shall be given unless all the members so present participate in it. Only members at hearing to participate in decision

(13) The decision of a majority of the members of the board is the board's decision. Decision

96.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may make submissions as to penalty and the board of inquiry may, Penalties

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

(f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

Calculation

(1a) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day.

Idem

(2) Instead of or in addition to a penalty described in subsection (1), the board may reprimand the police officer.

Notice of decision

(3) The board shall promptly give written notice of the decision, with reasons, to the parties and the Attorney General.

Appeal to Divisional Court

97.—(1) A party to a hearing before a board of inquiry may appeal to the Divisional Court within thirty days of receiving notice of the board's decision.

Grounds for appeal

(2) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Attorney General

(3) The Attorney General is entitled to be heard, by counsel or otherwise, on the argument of the appeal.

POLICE COMPLAINTS COMMISSIONER

Appointment of Commissioner

98.—(1) The Lieutenant Governor in Council shall appoint a Police Complaints Commissioner, to hold office for a term not exceeding five years.

Reappointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding five years in each case.

Staff

R.S.O. 1980, c. 418

(3) Such employees as are considered necessary for the purposes of this Part may be appointed under the *Public Service Act*.

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council. Remuneration

(5) The Commissioner shall maintain copies of all records, reports and other materials received under this Part. Records

(6) The Commissioner shall monitor the handling of complaints by bureaus and chiefs of police. Monitoring handling of complaints

(7) The Commissioner may establish local offices. Local offices

(8) Anything that is given to or served upon the Commissioner under this Part may be given or served at one of the local offices. Idem

(9) The Commissioner shall report annually to the Attorney General. Annual report

(10) The Commissioner's accounts shall be audited annually by the Provincial Auditor. Audit

99.—(1) For the purposes of an investigation under section 87 or 88 or a review under section 90, the Commissioner may, if he or she has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, enter a police station after informing the chief of police and examine there documents and things related to the complaint. Powers on investigation or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or review as if it were an inquiry under that Act. Powers on inquiry

R.S.O. 1980, c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review the Commissioner is authorized to make and the person has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment of person to make investigation or review

(4) The person shall be provided with a certificate of appointment containing his or her photograph, and while exercising any powers or performing any duties in respect of the investigation or review shall produce the certificate of appointment upon request. Identification

(5) The person shall report the results of the investigation or review to the Commissioner. Report

Obstruction

(6) No person shall obstruct the Commissioner or a person appointed under subsection (3) or withhold from the Commissioner or person or conceal or destroy any documents or things related to the investigation or review.

Search warrant

(7) If a justice of the peace is satisfied, on an application made without notice by the Commissioner or a person appointed under subsection (3), that there are reasonable grounds to believe that there are in any place documents or things relating to an investigation or review, the justice of the peace may make an order authorizing the applicant, together with such persons as he or she calls on for assistance, to enter the place, by force if necessary, search for the documents or things and examine them.

Entry and search at night restricted

(8) The entry and search shall not be made between the hours of 9 p.m. and 6 a.m. unless the order so authorizes.

Removal of books, etc.

(9) The Commissioner may, upon giving a receipt, remove any documents or things examined under subsection (1) or (7) relating to the investigation or review, shall cause them to be copied with reasonable dispatch and shall then return them promptly to the person from whom they were removed.

Admissibility of copies

(10) A copy made as provided in subsection (9) and certified to be a true copy by the Commissioner is admissible in evidence in any proceeding and is proof, in the absence of evidence to the contrary, of the original document and its contents.

Appointment of expert

(11) The Commissioner may appoint an expert to examine documents or things examined under subsection (1) or (7).

Recommendations concerning police practices or procedures

100.—(1) The Commissioner may make recommendations with respect to the practices or procedures of a police force by sending the recommendations, with any supporting documents, to,

(a) the Attorney General;

(b) the Solicitor General;

(c) the chief of police;

(d) the association, if any; and

(e) the police services board, in the case of a municipal police force.

(2) Within ninety days of receiving the recommendations, the chief of police, association and police services board shall send their comments to the Attorney General, the Solicitor General and the Commissioner. Comments

101. The Commissioner's decisions under subsection 82 (5) (complaint to continue to be dealt with despite informal resolution), subsection 83 (6) (complaint to continue to be dealt with despite withdrawal) and clause 87 (1) (b) (decision to conduct investigation because of undue delay) shall be deemed to be made in the exercise of a statutory power of decision. Judicial review of Commissioner's decisions

BOARDS OF INQUIRY

102.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry to conduct hearings in connection with complaints. Panel for boards of inquiry

(2) One-third of the members of the panel shall be members of the Law Society of Upper Canada who are recommended for appointment by the Attorney General. Recommendations for appointment

(3) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Police Association of Ontario. Idem

(4) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Association of Municipalities of Ontario. Recommendations for appointment

(5) The Attorney General may make the recommendations under subsection (3) or (4) if the Police Association of Ontario or the Association of Municipalities of Ontario, as the case may be, do not submit written recommendations to the Attorney General within the time that he or she specifies. Failure to make recommendations

(6) Appointments to the panel shall be for a term not exceeding three years and a member may be reappointed for a further term or terms. Term

(7) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board to which he or she was assigned before the expiration of the term. Continuance in office for uncompleted assignments

Remuneration

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Chair

(9) The Lieutenant Governor in Council shall appoint a person to be the chair of the panel.

Annual summary of decisions

(10) The chair shall cause to be prepared and published an annual summary of the decisions of boards, with reasons.

GENERAL MATTERS

Police officer's employment record

103. No reference to a complaint, a hearing held under this Part or a disciplinary hearing conducted under section 60 as a result of the complaint shall be made in the police officer's employment record, and the matter shall not be taken into account for any purpose related to his or her employment, unless,

(a) the police officer is convicted of an offence in connection with the incident;

(b) misconduct is proved on clear and convincing evidence at a hearing held under this Part or at a disciplinary hearing;

(c) the chief of police admonishes the police officer in connection with the incident, in accordance with subsection 59 (1);

(d) the police officer admits misconduct in the course of attempts to resolve the complaint informally; or

(e) the police officer resigns before the complaint is finally disposed of.

Resignation after hearing ordered

104.—(1) This section applies to a police officer who resigns from the police force after a hearing is ordered under section 89 or 90.

Idem

(2) If the police officer resigns before a board of inquiry is constituted under section 92, the following rules apply:

1. No board of inquiry shall be constituted unless the police officer, within six months of the resignation, applies for employment with a police force or is employed by a police force.

2. In that case, the board acquires jurisdiction over the police officer despite the earlier resignation.

(3) If the police officer resigns after a board of inquiry is constituted, the following rules apply: Idem

1. The board of inquiry loses jurisdiction over the police officer.

2. If the police officer, within six months of the resignation, applies for employment with a police force or is employed by a police force, the board's jurisdiction is revived.

105.—(1) A notice or other document required to be given or sent under this Part is sufficiently given if delivered personally or sent by prepaid registered mail addressed to the person. Notice

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date. Notice by mail

106.—(1) The chief of police may authorize any police officer of the rank of inspector or higher (from another police force if there is none in the chief's own police force) to exercise any power or perform any duty of the chief of police referred to in this Part. Delegation by chief of police

(2) The Commissioner may authorize any member of his or her staff to exercise any power or perform any duty of the Commissioner referred to in this Part. Delegation by Commissioner

107.—(1) Every person engaged in the administration of this Part, including a member of a police force, shall preserve secrecy in respect of all matters that come to his or her knowledge in the course of his or her duties, and shall not communicate any such matter to any other person except, Confidentiality

(a) as this Act or the regulations require;

(b) as may be required for law enforcement purposes;

(c) to his or her counsel; or

(d) with the consent of the person to whom the matter relates.

(2) No person to whom subsection (1) applies shall be required to testify in a civil proceeding with regard to inform- Testimony

ation obtained in the course of his or her duties, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Inadmissibility

(3) No document prepared under this Part as the result of a complaint and no statement referred to in subsection 95 (6) (statements made during attempt at informal resolution) is admissible in a civil proceeding, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Non-application of R.S.O.1980, c. 325

108. The *Ombudsman Act* does not apply to anything done under this Part.

Agreement for contributions

109. The Attorney General may, with the approval of the Lieutenant Governor in Council, enter into an agreement with a municipality providing for its payment to the Treasurer of Ontario, on such conditions as may be agreed upon, of contributions in respect of the amounts required for the purposes of this Part.

Offence

110. A person who contravenes subsection 95 (4) (photography at hearing), 99 (6) (obstructing Commissioner) or 107 (1) (confidentiality) is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Definition

1984, c. 63

111.—(1) In subsection (2), "former Act" means the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Transition, complaints under former Act

(2) Despite the repeal of the former Act by subsection 145 (1), complaints made under the former Act before the day this Act comes into force shall be dealt with in accordance with the former Act, except that hearings before boards of inquiry that are constituted after the day this Act comes into force shall be conducted in accordance with this Part.

PART VII

SPECIAL INVESTIGATIONS

Special investigations unit

112.—(1) There shall be a special investigations unit of the Ministry of the Solicitor General.

Composition

(2) The unit shall consist of a director appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General and investigators appointed under the *Public Service Act*.

R.S.O. 1980, c. 418

Idem

(2a) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators.

(3) The director and investigators are peace officers. Peace officers

(4) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. Investigations

(4a) An investigator shall not participate in an investigation that relates to members of a police force of which he or she was a member. Restriction

(5) The director shall lay charges against police officers in connection with the matters investigated if, in his or her opinion, there are reasonable and probable grounds to do so. Charges

(6) The director shall report the results of investigations to the Attorney General. Report

(7) Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations. Co-operation of police forces

PART VIII

Labour Relations

113. In this Part, Definitions

"Arbitration Commission" means the Ontario Police Arbitration Commission continued by subsection 129 (1);

"senior officer" means a member of a police officer who has the rank of inspector or higher or is employed in a supervisory or confidential capacity.

114.—(1) This Part, except section 115 and the definition of "senior officer" in section 113, does not apply to the Ontario Provincial Police. Exclusion of O.P.P.

(2) The working conditions and remuneration of the chief of police and deputy chief of police of a police force shall be determined under clause 31 (1) (d) (responsibilities of board) and not under this Part. Exclusion of chief of police and deputy

115.—(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter. Hearing re person's status

(2) The Commission's decision is final. Decision final

Membership in trade union prohibited, exception

116. A member of a police force shall not become or remain a member of a trade union or of an organization that is affiliated directly or indirectly with a trade union, unless the membership is required for secondary activities that do not contravene section 46 and the chief of police consents.

Categories

117.—(1) If a majority of the members of a police force, or an association that is entitled to give notices of desire to bargain, assigns the members of the police force to different categories for the purposes of this Part, bargaining, conciliation and arbitration shall be carried on as if each category were a separate police force.

Senior officers

(2) If at least 50 per cent of the senior officers of a police force belong to an association composed only of senior officers, bargaining, conciliation and arbitration shall be carried on as if the senior officers were a separate police force.

Restriction

(3) Bargaining, conciliation and arbitration may be carried on with more than two categories within a police force (apart from senior officers) only if the Commission has approved the creation of the categories.

Notice of desire to bargain

118.—(1) If no agreement exists or at any time after ninety days before an agreement would expire but for subsection 127 (1) or (2), a majority of the members of a police force may give the board notice in writing of their desire to bargain with a view to making an agreement, renewing the existing agreement, with or without modifications, or making a new agreement.

Bargaining

(2) Within fifteen days after the notice of desire to bargain is given or within the longer period that the parties agree upon, the board shall meet with a bargaining committee of the members of the police force.

Idem

(3) The parties shall bargain in good faith and make every reasonable effort to come to an agreement dealing with remuneration, pensions, sick leave credit gratuities, grievance procedures and working conditions (except those governed by this Act or the regulations) of the members of the police force.

Filing of agreement

(4) The board shall promptly file a copy of any agreement with the Arbitration Commission.

Association

(5) If at least 50 per cent of the members of the police force belong to an association, it shall give the notice of desire to bargain.

Pension plans under R.S.O.1980, c. 302

(6) If the notice of desire to bargain involves pensions under a pension plan established or to be established under the *Municipal Act*, it shall also be given to the Minister of Municipal Affairs, who may determine the maximum pension benefits that may be included in any agreement or award with respect to the pension plan.

Bargaining committee

119.—(1) The members of the bargaining committee shall be members of the police force.

Counsel and advisors

(1a) One legal counsel and one other advisor for each of the bargaining committee and the board may participate in the bargaining sessions.

Police organization

(2) If the notice of desire to bargain is given by an association that is affiliated with a police organization, or if at least 50 per cent of the members of the police force belong to a police organization, a member of the organization may attend the parties' bargaining sessions in an advisory capacity.

Chief of police

(4) The chief of police or, if the parties consent, another person designated by the chief of police may also attend the parties' bargaining sessions in an advisory capacity.

Appointment of conciliation officer

120.—(1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a notice of desire to bargain has been given.

Duty of conciliation officer

(2) The conciliation officer shall confer with the parties and endeavour to effect an agreement and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(4) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that an agreement may be made within a reasonable time if the period is extended.

Report

(5) When the conciliation officer reports to the Solicitor General that an agreement has been reached or that an agreement cannot be reached, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(6) Neither party shall give a notice requiring matters in dispute to be referred for arbitration under section 121 until the Solicitor General has informed the parties of the conciliation officer's report or informed them that he or she does not consider the case appropriate for the appointment of a conciliation officer.

Arbitration

121.—(1) If matters remain in dispute after bargaining under section 118 and conciliation, if any, under section 120, a party may give the Solicitor General and the other party a written notice referring the matters to arbitration.

Composition of arbitration board

(2) The following rules apply to the composition of the arbitration board:

1. The parties shall determine whether it shall consist of one person or of three persons. If they are unable to agree on this matter, the arbitration board shall consist of one person.

2. If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the Solicitor General.

3. If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the Solicitor General.

Time for arbitration

(3) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver its decision or award within sixty days after commencing the arbitration.

Representations by council

(4) The municipal council may make representations before the arbitration board if it is authorized to do so by a resolution.

Criteria

(5) In making an award, the arbitration board shall take into account the interest and welfare of the community served by the police force as well as any local factors affecting the community.

Filing of award

(6) The arbitration board shall promptly file a copy of its decision or award with the Arbitration Commission.

Costs and expenses

(7) The following rules apply with respect to the costs and expenses of the arbitration:

1. The Arbitration Commission shall pay the fees of any person the Solicitor General appoints to the arbitration board.

2. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

3. The parties shall share equally the costs and expenses for matters shared in common, including the fees of any person whom they jointly appoint to the arbitration board.

Dispute, appointment of conciliation officer

122.—(1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a difference arises between the parties concerning an agreement or an arbitrator's decision or award made under this Part, or if it is alleged that an agreement or award has been violated.

Duty of conciliation officer

(2) The conciliation officer shall confer with the parties and endeavour to resolve the dispute and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(3) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that the dispute may be resolved within a reasonable time if the period is extended.

Report

(4) When the conciliation officer reports to the Solicitor General that the dispute has been resolved or that it cannot be resolved by conciliation, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(5) Neither party shall give a notice referring the dispute for arbitration until the Solicitor General has informed the parties of the conciliation officer's report.

Arbitration after conciliation fails

123.—(1) If the conciliation officer reports that the dispute cannot be resolved by conciliation, either party may give the Solicitor General and the other party a written notice referring the dispute to arbitration.

Idem

(2) The procedure provided by subsection (1) is available in addition to any grievance or arbitration procedure provided by the agreement, decision or award.

Composition of arbitration board

(3) The following rules apply to the composition of the arbitration board:

1. The parties shall determine whether it shall consist of one person or of three persons. If they are unable to agree on this matter, the arbitration board shall consist of one person.

2. If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the Solicitor General.

3. If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the Solicitor General.

Time for arbitration

(4) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver a decision within a reasonable time.

Filing of decision

(5) The arbitration board shall promptly file a copy of its decision with the Arbitration Commission.

Costs and expenses

(6) The following rules apply with respect to the costs and expenses of the arbitration:

1. The Arbitration Commission shall pay the fees of any person the Solicitor General appoints to the arbitration board.

2. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

3. The parties shall share equally the costs and expenses for matters shared in common, including the fees of any person whom they jointly appoint to the arbitration board.

Enforcement

(7) After the day that is thirty days after the delivery of the decision or after the day that the decision provides for compliance, whichever is later, the arbitration board may, of its own motion, and shall, at a party's request, file a copy of the decision, in the prescribed form, in the office of the Registrar of the Supreme Court.

Idem

(8) The decision shall be entered in the same way as a judgment of the Supreme Court and may be enforced as such.

Extension of time

124. The parties may agree to extend any period of time mentioned in this Part.

Non-application of R.S.O.1980, c. 25

125. The *Arbitrations Act* does not apply to arbitrations conducted under this Part.

Agreements, decisions and awards binding

126. Agreements, decisions and awards made under this Part bind the board and the members of the police force.

Duration of agreements, decisions and awards

127.—(1) Agreements, decisions and awards remain in effect until the end of the year in which they come into effect and thereafter continue in effect until replaced.

Longer duration if parties agree

(2) The parties to an agreement may provide that the agreement and any decisions or awards made with respect to it shall remain in effect until the end of the year following the year in which they come into effect and thereafter shall continue in effect until replaced.

Provision for expenditures

128.—(1) If, when the council is adopting its annual estimates, a notice of desire to bargain has been given but there is not yet an agreement, decision or award, the council shall make such provision for the payment of expenditures that will result from the expected agreement, decision or award as it considers adequate.

Coming into effect

(2) An agreement, decision or award comes into effect on the first day of the fiscal period in respect of which the municipal council may make provision for it in its estimates, whether that day is before or after the agreement, decision or award is made.

Exception

(3) A provision of the agreement, decision or award that does not involve municipal expenditures may come into effect earlier than the day referred to in subsection (2).

Arbitration Commission continued

129.—(1) The commission known as the Ontario Police Arbitration Commission is continued.

Composition

(2) The Arbitration Commission shall be composed of the following members, appointed by the Lieutenant Governor in Council:

1. Two representatives of boards, recommended for appointment by the Municipal Police Authorities.

2. Two representatives of members of associations, recommended for appointment by the Police Association of Ontario.

3. A chair.

Terms of office

(3) The representatives of boards and members of associations shall hold office for two-year terms and may be reappointed; the chair shall hold office during pleasure.

Staff

(4) Such employees as are necessary for the proper conduct of the Arbitration Commission's work may be appointed under the *Public Service Act*.

R.S.O. 1980, c. 418

Responsibilities of Arbitration Commission

(5) The Arbitration Commission has the following responsibilities:

1. Maintaining a register of arbitrators who are available for appointment.

2. Assisting arbitrators by making administrative arrangements in connection with arbitrations.

3. Fixing the fees of arbitrators appointed by the Solicitor General under section 123.

4. Sponsoring the publication and distribution of information about agreements, arbitrations and awards.

5. Sponsoring research on the subject of agreements, arbitrations and awards.

6. Maintaining a file of agreements, decisions and awards made under this Part.

Regulations

(6) Subject to the approval of the Lieutenant Governor in Council, the Arbitration Commission may make regulations,

(a) governing the conduct of arbitrations and prescribing procedures for them;

(b) prescribing forms and providing for their use.

Transition

(7) The persons who are members of the Arbitration Commission on the day this Act comes into force shall continue to hold office until their terms expire, and may be reappointed in accordance with subsection (2).

PART IX

REGULATIONS AND MISCELLANEOUS

Property in possession of police force

130.—(1) This section applies to personal property of all kinds, except firearms and money, that comes into the posses-

sion of a police force under either of the following circumstances:

1. The property was stolen from its owner or was found abandoned in a public place, and the chief of police is unable to determine who owns it.

2. The property was seized by a member of the police force in the lawful execution of his or her duties, all legal proceedings in respect of the property have been completed, there is no court order for its disposition and there is no legal requirement, apart from this section, that it be retained or disposed of.

Sale

(2) The chief of police may cause the property to be sold, and the board may use the proceeds for any purpose that it considers in the public interest.

Perishable property

(3) If the property is perishable, it may be sold at any time without notice.

Non-perishable property

(4) If the property is not perishable, the following rules apply to its sale:

1. The property may be sold when it has been in the possession of the police force for at least one month, in the case of a motor vehicle as defined in the *Highway Traffic Act* or a bicycle, or for at least three months, in the case of other property.

R.S.O. 1980, c. 198

2. The sale shall be by public auction.

3. At least ten days notice of the time and place of the public auction shall be given by publication in a newspaper of general circulation in the municipality.

4. The sale may be adjourned, repeatedly if necessary, until the property is sold.

Claim of owner of property

(5) If a motor vehicle, bicycle or other property has been sold before it has been in the possession of the police force for three months and if the owner makes a claim before that time, the owner is entitled to receive the proceeds, less the costs of storage, advertising and sale.

Register of property

(6) The chief of police shall ensure that the police force keeps a register of property and that the following rules are followed:

1. The description and location of every item of property shall be recorded.

2. If the property is sold, full particulars shall be recorded.

3. If the property is returned to its owner, his or her name, address and telephone number shall be recorded.

Exception

R.S.O. 1980, c. 198

(7) This section does not apply to a motor vehicle that is impounded under section 192 of the *Highway Traffic Act*.

Money

131.—(1) This section applies to money that comes into the possession of a police force under the circumstances described in paragraph 1 or 2 of subsection 130 (1).

Accounting

(2) The money shall be accounted for according to the prescribed method.

Use of money

(3) If three months have elapsed after the day the money came into the possession of the police force and the owner has not claimed it, the board may use it for any purpose that it considers in the public interest.

Firearms

132.—(1) This section applies to firearms that are in the possession of a police force because they have been found, turned in, seized or forfeited on a prosecution.

Safekeeping, return to owner

(2) The chief of police shall ensure that firearms are securely stored, and that they are returned to their owners if there is a court order or other legal requirement to that effect.

Destruction

(3) If all possible court proceedings relating to a firearm have been completed or the time for them has expired and there is no court order or other legal requirement that the firearm be returned to its owner, the chief of police shall ensure that it is destroyed promptly, unless subsection (4) applies.

Firearm of special interest

(4) If the chief of police considers the firearm unique, an antique, or of educational or historical value, he or she shall notify the Director of the Centre of Forensic Sciences.

Idem

(5) If the Director indicates, within three months of receiving notice, that the firearm is required for the Centre's collection, the chief of police shall ensure that it is transferred there.

(6) If the Director indicates that the firearm is not required for the Centre's collection or fails to respond within three months of receiving notice, the chief of police shall ensure that the firearm is destroyed promptly. Idem

(7) The chief of police may dispose of a firearm to which subsection (6) applies otherwise than by having it destroyed if he or she first obtains the Solicitor General's approval of the method of disposal. Disposal otherwise than by destruction

(8) The chief of police shall ensure that the police force keeps a register of firearms and that the following rules are followed: Register of firearms

1. Every firearm's description and location shall be recorded.

2. When a firearm ceases to be in the possession of the board or of a member of the police force, full particulars shall be recorded, including the name of the person who disposed of it and the date and method of disposal.

3. If the firearm is returned to its owner, his or her name, address and telephone number shall also be recorded.

4. On or before the 31st day of January in each year, a statement shall be filed with the Commission listing the firearms that have come into the possession of the police force during the preceding calendar year, indicating which firearms are still being retained and which have been disposed of, and giving the particulars of disposition.

133.—(1) The Lieutenant Governor in Council may make regulations, Regulations

1. prescribing standards for police services;

2. prescribing procedures for the inspection and review by the Solicitor General of police forces;

3. requiring municipalities to provide police detention facilities, governing those facilities and providing for their inspection;

4. providing for financial aid to police training schools;

5. prescribing the minimum amount of remuneration to be paid by municipalities to the members of boards who are appointed by the Lieutenant Governor in Council or Solicitor General;

6. prescribing the procedures to be followed by boards and the places at which their meetings shall be held;

7. prescribing the forms of oaths or affirmations of office and secrecy for the purposes of section 32 (members of boards), section 45 (police officers), subsection 52 (5) (auxiliary members of police forces), subsection 53 (7) (special constables) and subsection 54 (6) (First Nations Constables);

8. respecting the government, operation and administration of police forces;

9. governing the qualifications for the appointment of persons to police forces and for their promotion;

10. prescribing groups of persons for the purposes of subsection 48 (1) (employment equity plans);

11. prescribing matters to be contained in employment equity plans;

12. respecting the political activities in which municipal police officers are permitted to engage;

13. establishing the ranks that shall be held by members of municipal police forces;

14. prescribing the minimum salary or other remuneration and allowances to be paid to members of municipal police forces;

15. regulating or prohibiting the use of any equipment by a police force or any of its members;

16. regulating the use of force by members of police forces;

17. prescribing standards of dress for police officers on duty and prescribing requirements respecting police uniforms;

18. prescribing courses of training for members of police forces and prescribing standards in that connection;

19. governing the conduct, duties, suspension and dismissal of members of police forces;

20. describing the circumstances under which members of police forces are permitted and not permitted to pursue persons by means of motor vehicles, and prescribing procedures that shall be followed when a person is pursued in that manner;

21. prescribing the records, returns, books and accounts to be kept by police forces and their members;

22. prescribing the method of accounting for fees and costs that come into the hands of members of police forces;

23. prescribing a code of offences for the purpose of section 56 (misconduct);

24. providing for the payment of fees and expenses to witnesses at hearings conducted under Part V or VI;

25. prescribing procedures for the investigation of complaints under Part VI;

26. assigning further duties to the Police Complaints Commissioner;

27. prescribing the method of accounting for money to which section 131 applies;

28. prescribing forms and providing for their use;

29. prescribing any matter that this Act requires to be prescribed or refers to as being prescribed;

30. respecting any matter that is necessary or advisable to implement this Act effectively.

Idem

(2) A regulation made under subsection (1) may be general or particular in its application.

Crown bound

133a. This Act binds the Crown in right of Ontario.

PART X

CONSEQUENTIAL AMENDMENTS AND REPEALS

134. Section 66 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Non-application of 1990, c. ...

66.—(1) The *Police Services Act, 1990*, being chapter ..., except section 15 (municipal by-law enforcement officers), does not apply to the District Corporation or to an area municipality.

Non-application of R.S.O. 1980, c. 302, ss. 202, 203

(2) Sections 202 and 203 of the *Municipal Act* do not apply to an area municipality.

135.—(1) Section 174 of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

174. In this Part, "Metropolitan Board" means The Municipality of Metropolitan Toronto Police Services Board.

(2) Subsections 175 (1) and (2) of the said Act are repealed.

(3) Subsection 177 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10 and amended by 1988, chapter 12, section 1, is repealed and the following substituted therefor:

Composition of Metropolitan Board 1990, c. ...

(1) The Metropolitan Council shall be deemed to have applied to the Lieutenant Governor in Council for an increase in the size of its board under subsection 27 (9) of the *Police Services Act, 1990* and the Lieutenant Governor in Council shall be deemed to have approved the application.

(4) Section 178 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10, is repealed.

136.—(1) Section 73 of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

73. In this Part, "Durham Police Board" means The Regional Municipality of Durham Police Services Board.

(2) Section 74 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 1, is repealed.

(3) Subsection 75 (1) of the said Act is repealed and the following substituted therefor:

(1) The Durham Police Board and the members of the Durham Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

137.—(1) Section 68 of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

68. In this Part, "Haldimand-Norfolk Police Board" means The Regional Municipality of Haldimand-Norfolk Police Services Board. Definition

(2) Section 69 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 2, is repealed.

(3) Subsections 70 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

(1) The Haldimand-Norfolk Police Board and the members of the Haldimand-Norfolk Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

(2) Despite subsection 31 (1) of the *Police Services Act, 1990*, the Haldimand-Norfolk Police Board is responsible for providing police services only for those portions of the Regional Area in which a local municipality maintained a police force on the 31st day of March, 1974. Jurisdiction 1990, c. ...

(3) With the Solicitor General's approval, the Haldimand-Norfolk Police Board may assume responsibility for providing police services for additional portions of the Regional Area. Idem

138.—(1) Section 79 of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

79. In this Part, "Halton Police Board" means The Regional Municipality of Halton Police Services Board. Definition

(2) Section 80 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 3, is repealed.

(3) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Halton Police Board and the members of the Halton Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

139.—(1) Section 90 of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

90. In this Part, "Hamilton-Wentworth Police Board" means The Regional Municipality of Hamilton-Wentworth Police Services Board.

(2) Section 91 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 4, is repealed.

(3) Subsection 92 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Hamilton-Wentworth Police Board and the members of the Hamilton-Wentworth Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

140.—(1) Section 116 of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

116. In this Part, "Niagara Police Board" means The Regional Municipality of Niagara Police Services Board.

(2) Section 117 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 5, is repealed.

(3) Subsection 118 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Niagara Police Board and the members of the Niagara Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

141.—(1) Section 74 of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

74. In this Part, "Peel Police Board" means The Regional Municipality of Peel Police Services Board. Definition

(2) Section 75 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 6, is repealed.

(3) Subsection 76 (1) of the said Act is repealed and the following substituted therefor:

(1) The Peel Police Board and the members of the Peel Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

142.—(1) Section 38 of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

38. In this Part, "Sudbury Police Board" means The Regional Municipality of Sudbury Police Services Board. Definition

(2) Section 39 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 57, section 7, is repealed.

(3) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

(1) The Sudbury Police Board and the members of the Sudbury Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

143.—(1) Section 109 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

109. In this Part, "Waterloo Police Board" means The Regional Municipality of Waterloo Police Services Board. Definition

(2) Section 110 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 8, is repealed.

(3) Subsection 111 (1) of the said Act is repealed and the following substituted therefor:

(1) The Waterloo Police Board and the members of the Waterloo Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

144.—(1) Section 111 of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

111. In this Part, "York Police Board" means The Regional Municipality of York Police Services Board.

(2) Section 112 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 9, is repealed.

(3) Subsection 113 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The York Police Board and the members of the York Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

145.—(1) The following are repealed:

1. **The *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, except section 57a, as enacted by the Statutes of Ontario, 1989, chapter 24, section 1.**

2. **The *Police Amendment Act, 1981*, being chapter 55.**

3. **The *Police Amendment Act, 1983*, being chapter 57.**

4. **Section 201 of the *Courts of Justice Act, 1984*, being chapter 11.**

5. **Section 53 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.**

6. **The *Metropolitan Toronto Police Force Complaints Act, 1984*, being chapter 63.**

7. **The *Metropolitan Toronto Police Force Complaints Amendment Act, 1986*, being chapter 31.**

(2) The title of the *Police Act* is repealed and the following substituted therefor:

COURT SECURITY ACT

147. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

148. The short title of this Act is the *Police Services Act, 1990*. Short title

Government Publication

Bill 107

An Act to revise the Police Act and amend the law relating to Police Services

The Hon. S. Offer
Solicitor General

Legislative Assembly of Ontario

1st Reading December 20th, 1989
2nd Reading May 17th, 1990
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

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EXPLANATORY NOTES

The Bill replaces the *Police Act*. The following are some of the proposed changes:

1. A declaration of principles is included (section 1).

2. Every municipality responsible for providing police services is required to establish a police services board to govern the municipal police force (section 27). These boards (formerly boards of commissioners of police) will be supervised by the Ontario Civilian Commission on Police Services (formerly the Ontario Police Commission) (Part II).

3. The minimum educational standard required of candidates for the position of police officer is raised from two to four years of secondary education (section 43).

4. Every police force is required to establish and implement an employment equity plan (section 48).

5. Special constables will be appointed by municipal police services boards and by the Commissioner of the Ontario Provincial Police (section 53).

6. The category of First Nations Constable is created (section 54).

7. Provisions relating to police disciplinary proceedings are revised (Part V).

8. A province-wide mandatory system for dealing with public complaints is introduced, based on the system currently in use in The Municipality of Metropolitan Toronto (Part VI).

9. A special investigations unit of the Ministry of the Solicitor General is established to investigate police conduct and to lay charges where appropriate (Part VII).

10. Bargaining, conciliation and arbitration provisions that apply to municipal police forces are revised (Part VIII).

11. The regulation-making powers of the Lieutenant Governor in Council are expanded to cover subjects such as standards of police services, the administration and operation of police forces, police pursuits and political activities (section 135).

12. Distinctions between municipal police forces and the Ontario Provincial Police are reduced.

Bill 107 1989

An Act to revise the Police Act and amend the law relating to Police Services

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Police services shall be provided throughout Ontario in accordance with the following principles: Declaration of principles

1. The need to ensure the safety and security of all persons and property in Ontario.

2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code, 1981*. 1981, c. 53

3. The need for co-operation between the providers of police services and the communities they serve.

4. The importance of respect for victims of crime and understanding of their needs.

5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.

6. The need to ensure that police forces are representative of the communities they serve.

Definitions

2. In this Act,

"association" means an association whose members belong to one police force and whose objects include the improvement of their working conditions and remuneration;

"board" means, except in Part VI, a municipal police services board;

"chief of police" means a municipal chief of police or the Commissioner of the Ontario Provincial Police and includes an acting chief of police;

"Commission" means the Ontario Civilian Commission on Police Services;

"Commissioner" means, except in Part VI, the Commissioner of the Ontario Provincial Police;

"member of a police force" means a police officer, and in the case of a municipal police force includes an employee who is not a police officer;

"municipality" includes district, metropolitan and regional municipalities and the County of Oxford;

"police force" means the Ontario Provincial Police or a municipal police force;

"police officer" means a chief of police or any other police officer, but does not include a special constable, a First Nations Constable, a by-law enforcement officer or an auxiliary member of a police force;

"prescribed" means prescribed by the regulations;

"regulations" means the regulations made under this Act.

PART I

RESPONSIBILITY FOR POLICE SERVICES

SOLICITOR GENERAL

Administration of Act

3.—(1) This Act, except Part VI, shall be administered by the Solicitor General.

Duties and powers of Solicitor General

(2) The Solicitor General shall,

(a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels;

(b) monitor boards and police forces to ensure that they comply with prescribed standards of service;

(c) monitor the establishment and implementation of employment equity plans;

(d) develop and promote programs to enhance professional police practices, standards and training;

(e) conduct a system of inspection and review of police forces across Ontario;

(f) assist in the co-ordination of police services;

(g) consult with and advise boards, municipal chiefs of police, employers of special constables and associations on matters relating to police and police services;

(h) develop, maintain and manage programs and statistical records and conduct research studies in respect of police services and related matters;

(i) provide to boards and municipal chiefs of police information and advice respecting the management and operation of police forces, techniques in handling special problems and other information calculated to assist;

(j) issue directives and guidelines respecting policy matters;

(k) develop and promote programs for community-oriented police services;

(l) operate the Ontario Police College.

Ontario Police College continued

(3) The police college known as the Ontario Police College for the training of members of police forces is continued.

MUNICIPALITIES

Police services in municipalities

4.—(1) Every municipality to which this subsection applies shall provide adequate and effective police services in accordance with its needs.

Application of subsection (1)

(2) Subsection (1) applies to,

(a) cities, towns, villages and townships (other than area municipalities within regional or metropolitan municipalities); and

(b) regional and metropolitan municipalities.

Exception, Muskoka

(3) Subsection (1) does not apply to The District Municipality of Muskoka or to its area municipalities.

Exception, Ottawa-Carleton

(4) Subsection (1) does not apply to The Regional Municipality of Ottawa-Carleton but does apply to its area municipalities.

Exception, Oxford County

(5) Subsection (1) does not apply to the County of Oxford but does apply to its area municipalities.

Exemption of towns of less than 5,000

R.S.O. 1980, c. 31

(6) The Lieutenant Governor in Council may, on the Solicitor General's recommendation, exempt any town having a population of less than 5,000 according to the last enumeration taken under section 14 of the *Assessment Act* from the application of subsection (1), and the exemption continues in effect until it is revoked.

Restriction, villages and townships

(7) Subsection (1) applies to a village or township only if it has been so designated by the Lieutenant Governor in Council on the Solicitor General's recommendation; the designation may relate to all or part of the village or township.

Methods of establishing municipal police forces

5. A municipality's responsibility for providing police services shall be discharged in one of the following ways:

1. The board may appoint the members of a police force under clause 31 (1) (a), in which case the municipal council shall pay the cost of the police force.

2. The board may enter into an agreement under section 7 (sharing police services).

3. The council may enter into an agreement under section 10 (agreements for provision of police services by O.P.P.).

4. With the Commission's approval, the municipality may adopt a different method of providing police services.

Amalgamation of police forces

6.—(1) Despite any other Act, two or more municipalities that have police forces may enter into an agreement to amalgamate them.

Contents of amalgamation agreement

(2) The agreement shall deal with,

(a) the establishment and composition of a board for the amalgamated police forces;

(b) the amalgamation of the police forces and the appointment or transfer of their members;

(c) the amalgamated board's use of the assets and its responsibility for the liabilities associated with the police forces;

(d) the budgeting of the cost for the operation of the amalgamated police force;

(e) any other matter that is necessary or advisable to effect the amalgamation.

Commission's approval

(3) The agreement does not take effect until the Commission has approved the organization of the amalgamated police force.

Exception, board appointments

(4) Appointments to a board for amalgamated police forces may be made before the agreement takes effect.

Municipal agreements for sharing police services

7. Two boards may agree that one board will provide police services to the other, on the conditions set out in the agreement.

Additional municipal police forces

8.—(1) A municipality to which subsection 4 (1) (obligation to provide police services) does not apply may, with the Commission's approval, establish and maintain a police force.

Transition

R.S.O. 1980, c. 381

(2) An approval given or deemed to have been given under section 19 of the *Police Act* in respect of a police force that

was being maintained on the day before this Act comes into force shall be deemed to have been given under this section.

Revocation

(3) The Commission may revoke an approval given or deemed to have been given under this section.

Failure to provide police services

9.—(1) If the Commission finds that a municipality to which subsection 4 (1) applies is not providing police services, it may request that the Commissioner have the Ontario Provincial Police give assistance.

Inadequate police services

(2) If the Commission finds that a municipal police force is not providing adequate and effective police services or is not complying with this Act or the regulations, it may communicate that finding to the board of the municipality and direct the board to take the measures that the Commission considers necessary.

Idem

(3) If the board does not comply with the direction, the Commission may request that the Commissioner have the Ontario Provincial Police give assistance.

Crown Attorney's request

(4) In any area for which a municipality is required to provide police services, the Crown Attorney may request that the Commissioner have the Ontario Provincial Police give assistance.

Board's request

(5) A board may, by resolution, request that the Commissioner have the Ontario Provincial Police give assistance.

Request of chief of police in emergency

(6) A municipal chief of police who is of the opinion that an emergency exists in the municipality may request that the Commissioner have the Ontario Provincial Police give assistance.

Chief of police to advise board

(7) A chief of police who makes a request under subsection (6) shall advise the chair of the board of the fact as soon as possible.

Assistance of O.P.P.

(8) When a request is made under this section, the Commissioner shall have the Ontario Provincial Police give such assistance as he or she considers necessary.

Cost of services

(9) The Commissioner shall certify the cost of the services provided under this section by the Ontario Provincial Police and, unless the Solicitor General directs otherwise, the municipality shall pay that amount to the Treasurer of Ontario.

Idem

(10) The amount may be deducted from any grant payable to the municipality out of provincial funds or may be

recovered by a court action, with costs, as a debt due to Her Majesty.

Municipal agreements for provision of police services by O.P.P.

10.—(1) The Solicitor General may enter into an agreement with the council of a municipality for the provision of police services for the municipality by the Ontario Provincial Police.

Board's consent

(2) The agreement requires the board's consent.

Collective bargaining

(3) No agreement shall be entered into under this section if, in the Solicitor General's opinion, the council seeks the agreement for the purpose of defeating the collective bargaining provisions of this Act.

Duties of O.P.P.

(4) When the agreement comes into effect, the members of the Ontario Provincial Police assigned to the municipality shall provide police services, including by-law enforcement, for the municipality, and shall perform any other duties that are specified in the agreement.

Payment into Consolidated Revenue Fund

(5) The amounts received from the municipality under the agreement shall be paid into the Consolidated Revenue Fund.

Role of board

(6) If the municipality has an agreement under this section, section 31 (responsibilities of board), section 38 (municipal police force) and clause 39 (3) (a) (estimates respecting police force) do not apply; however, the board shall advise the Solicitor General and the senior officer of the Ontario Provincial Police in the municipality with respect to police services in the municipality, and may generally determine priorities in the municipality with respect to police services, in accordance with the agreement and with provincial policies affecting the Ontario Provincial Police.

Fines

11.—(1) This section applies if a municipality is entitled to receive fines paid as a result of prosecutions instituted by police officers of the municipal police force.

Idem

(2) If the municipality does not have its own police force because of an agreement under section 7 or 10, the police officers who are assigned to the municipality under the agreement shall, for the purposes of determining entitlement to fines, be deemed to be police officers of the municipal police force.

Rates for cost of police services

12.—(1) With the Commission's approval, the costs incurred by a municipality in providing police services may be paid by levying different rates for different areas defined by the municipal council or by levying rates in some but not all areas.

Exemption for farm lands and buildings

(2) With the Commission's approval, the municipal council may grant a total or partial exemption from a rate or rates levied under subsection (1) to lands and buildings used exclusively for farming purposes.

Special areas

13.—(1) If, because of the establishment of a business or for any other reason, special circumstances or abnormal conditions in an area make it inequitable, in the Solicitor General's opinion, to impose the responsibility for police services on a municipality or on the Province, the Lieutenant Governor in Council may designate the area as a special area.

Agreement for provision of police services by O.P.P.

(2) The person who operates the business or owns the special area shall enter into an agreement with the Solicitor General for the provision of police services by the Ontario Provincial Police for the special area.

Duties of O.P.P., payment

(3) Subsections 10 (4) and (5) apply to the agreement with necessary modifications.

Failure to enter into agreement

(4) If the person who operates the business or owns the special area does not enter into an agreement as subsection (2) requires, the Ontario Provincial Police shall provide police services for the area.

Cost of services

(5) The costs of the services may be recovered from the person by a court action, with costs, as a debt due to Her Majesty.

Police services outside municipality

14. A municipality that has an interest in land outside the territory of the municipality may agree to pay all or part of the cost of providing police services for the land.

Municipal by-law enforcement officers

15.—(1) A municipal council may appoint persons to enforce the by-laws of the municipality.

Peace officers

(2) Municipal by-law enforcement officers are peace officers for the purpose of enforcing municipal by-laws.

Aid to survivors

16. A municipal council may grant financial or other assistance for the benefit of the surviving spouses and children of members of the municipal police force who die from injuries received or illnesses contracted in the discharge of their duties.

ONTARIO PROVINCIAL POLICE

Commissioner

17.—(1) There shall be a Commissioner of the Ontario Provincial Police who shall be appointed by the Lieutenant Governor in Council.

(2) Subject to the Solicitor General's direction, the Commissioner has the general control and administration of the Ontario Provincial Police and the employees connected with it. Functions

(3) The Commissioner shall prepare and implement an employment equity plan in accordance with section 48 and the regulations. Employment equity plans

(4) After the end of each calendar year, the Commissioner shall file with the Solicitor General an annual report on the affairs of the Ontario Provincial Police. Annual report

18.—(1) The Ontario Provincial Police shall consist of the Commissioner and other police officers appointed under the *Public Service Act*. Composition of O.P.P. R.S.O. 1980, c. 418

(2) The Commissioner shall establish the ranks within the Ontario Provincial Police and shall determine the rank of each police officer. Ranks

(3) The Lieutenant Governor in Council may name police officers of the Ontario Provincial Police to the rank of commissioned officers and may authorize the issue of commissions to them under the Great Seal. Commissioned officers

(4) The Commissioner may appoint such other employees as are required in connection with the Ontario Provincial Police. Employees

19.—(1) The Ontario Provincial Police have the following responsibilities: Responsibilities of O.P.P.

1. Providing police services in respect of the parts of Ontario that do not have municipal police forces other than by-law enforcement officers.

2. Providing police services in respect of all navigable bodies and courses of water in Ontario, except those that lie within municipalities designated by the Solicitor General.

3. Maintaining a traffic patrol on the King's Highway, except the parts designated by the Solicitor General.

4. Maintaining a traffic patrol on the connecting links within the meaning of section 21 of the *Public Transportation and Highway Improvement Act* that are designated by the Solicitor General. R.S.O. 1980, c. 421

5. Maintaining investigative services to assist municipal police forces on the Solicitor General's direction or at the Crown Attorney's request.

Municipal by-laws

(2) The Ontario Provincial Police have no responsibilities in connection with municipal by-laws, except under agreements made in accordance with section 10.

Aid to survivors

20. The Lieutenant Governor in Council may, out of money appropriated for that purpose by the Legislature, grant financial or other assistance for the benefit of the surviving spouses and children of members of the Ontario Provincial Police who die from injuries received or illnesses contracted in the discharge of their duties.

PART II

Ontario Civilian Commission on Police Services

Commission continued

21.—(1) The commission known as the Ontario Police Commission is continued under the name of "Ontario Civilian Commission on Police Services".

Composition

(2) The Commission shall consist of not fewer than three and not more than nine members who shall be appointed by the Lieutenant Governor in Council.

Chair

(3) The Lieutenant Governor in Council may designate one of the members of the Commission to be the chair.

Delegation

(4) The chair may authorize a member of the Commission to exercise the Commission's powers and perform its duties with respect to a particular matter, but the authority conferred on the Commission by sections 23 and 24 may not be delegated.

Quorum

(5) Two members of the Commission constitute a quorum.

Proceedings open to the public

(6) Meetings, hearings, investigations and inquiries conducted by the Commission shall be open to the public, subject to subsection (7), and notice of them shall be published in the manner that the Commission determines.

Exception

(7) The Commission may exclude the public from all or part of a meeting, hearing, investigation or inquiry if it is of the opinion that,

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public

interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

Admissibility of documents

(8) A document purporting to be issued by the Commission and signed by one of its members is admissible in evidence without proof of the signature or authority of the person signing.

Annual report

(9) After the end of each calendar year, the Commission shall file with the Solicitor General an annual report on its affairs.

Expenses

(10) The money required for the Commission's purposes shall be paid out of the amounts appropriated by the Legislature for that purpose.

Powers and duties of Commission

22.—(1) The Commission's powers and duties include,

(a) if the Solicitor General advises the Commission that a board or municipal police force is not complying with prescribed standards of police services,

(i) directing the board or police force to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (1);

(b) if the Solicitor General advises the Commission that a board or municipal chief of police is not complying with the requirements of this Act and the regulations respecting employment equity plans,

(i) directing the board or chief of police to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (2);

(c) conducting investigations with respect to municipal police matters under section 25;

(d) conducting inquiries into matters relating to crime and law enforcement under section 26;

(e) inquiring into any matter regarding the designation of a municipality under subsection 4 (7) (police services in villages and townships) and, after a hearing, making recommendations to the Solicitor General;

(f) hearing and disposing of appeals by members of police forces in accordance with Part V.

Powers of Commission in hearings, investigations and inquiries R.S.O. 1980, c. 411

(2) When the Commission conducts a hearing, investigation or inquiry, it has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the proceeding as if it were an inquiry under that Act.

Counsel

(3) At the Commission's request, the Solicitor General may appoint counsel to assist the Commission in a hearing, investigation or inquiry.

Sanctions for failure to comply with prescribed standards of police services

23.—(1) If the Commission is of the opinion, after holding a hearing, that a board or municipal police force has flagrantly or repeatedly failed to comply with prescribed standards of police services, the Commission may take any of the following measures or any combination of them:

1. Suspending the chief of police, one or more members of the board, or the whole board, for a specified period.

2. Removing the chief of police, one or more members of the board, or the whole board from office.

3. Disbanding the police force and requiring the Ontario Provincial Police to provide police services for the municipality.

4. Appointing an administrator to perform specified functions with respect to police matters in the municipality for a specified period.

Sanctions for failure to comply with requirements respecting employment equity plans

(2) If the Commission is of the opinion, after holding a hearing, that a board or municipal chief of police has failed to comply with the requirements of this Act and the regulations respecting employment equity plans, the Commission may

take any of the following measures or any combination of them:

1. Suspending the chief of police, one or more members of the board, or the whole board, for a specified period.

2. Removing the chief of police, one or more members of the board, or the whole board from office.

3. Appointing an administrator to perform specified functions with respect to employment equity, recruitment and promotion in the police force for a specified period.

Suspension with or without pay

(3) If the Commission suspends the chief of police or members of the board who are entitled to remuneration under subsection 27 (12), it shall specify whether the suspension is with or without pay.

Defence

(4) The Commission shall not take measures under subsection (2) with respect to the failure of a chief of police to meet specific goals or timetables contained in the employment equity plan if the Commission finds that the chief of police has made all reasonable efforts to meet them.

Powers of administrator

(5) An administrator appointed under paragraph 4 of subsection (1) or paragraph 3 of subsection (2) has all the powers necessary for the performance of his or her functions.

Replacement of chief of police

(6) If the Commission suspends or removes the chief of police, it may appoint a person to replace him or her.

Parties

(7) The parties to the hearing are the chief of police, the board, any member of the board that the Commission designates and, if the Commission so directs, the association or associations representing members of the police force.

Idem

(8) The Commission may add parties at any stage of the hearing on the conditions it considers proper.

Replacement of suspended or removed member

(9) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member.

Consequences of removal and suspension

(10) A member who has been removed shall not subsequently be a member of any board, and a member who has been suspended shall not be reappointed during the period of suspension.

Appeal to Divisional Court

(11) A party may appeal to the Divisional Court within thirty days of receiving notice of the Commission's decision.

Grounds for appeal

(12) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Idem

(13) An appeal may also be made from a finding that a chief of police has made all reasonable efforts to meet the specific goals and timetables contained in an employment equity plan.

Appeal by non-parties

(14) If the consent of the Attorney General is sought within thirty days of the Commission's decision and is given, a person who is not a party may appeal under subsection (13) as if he or she were a party.

Emergency, interim order

24.—(1) The Commission may make an interim order under subsection 23 (1), without notice and without holding a hearing, if it is of the opinion that an emergency exists and that the interim order is necessary in the public interest.

Restriction

(2) The Commission shall not remove a person from office or disband a police force by means of an interim order.

Investigations

25.—(1) The Commission may, at the Solicitor General's request, at a municipal council's request or of its own motion, investigate, inquire into and report on,

(a) the conduct or the performance of duties of a municipal chief of police or other municipal police officer, an auxiliary member of a municipal police force, a special constable, a by-law enforcement officer or a member of a board;

(b) the administration of a municipal police force;

(c) the manner in which police services are provided for a municipality;

(d) the police needs of a municipality.

Cost of investigation

(2) The cost of an investigation conducted at a council's request shall be paid by the municipality, unless the Solicitor General directs otherwise.

Report

(3) The Commission shall communicate its report of an investigation under subsection (1) to the Solicitor General at his or her request and to the board or council at its request, and may communicate the report to any other person as the Commission considers advisable.

Penalties, member of police force

(4) If the Commission concludes after a hearing that a member of a police force is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may direct that the member be,

(a) demoted as the Commission specifies, permanently or for a specified period;

(b) dismissed; or

(c) retired, if the member is entitled to retire.

Penalties, member of board

(5) If the Commission concludes, after a hearing, that a member of a board is guilty of misconduct or is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may remove or suspend the member.

Appeal to Divisional Court

(6) A member of a police force or of a board on whom a penalty is imposed under subsection (4) or (5) may appeal to the Divisional Court within thirty days of receiving notice of the Commission's decision.

Grounds for appeal

(7) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Replacement of suspended or removed member

(8) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member.

Consequences of removal and suspension

(9) A member who has been removed shall not subsequently be a member of any board, and a member who has been suspended shall not be reappointed during the period of suspension.

Inquiries

26.—(1) The Lieutenant Governor in Council may direct the Commission to inquire into and report to the Lieutenant Governor in Council on any matter relating to crime or law enforcement, and shall define the scope of the inquiry in the direction.

Application of R.S.O. 1980, c. 411, s. 6

(2) Section 6 (stated case) of the *Public Inquiries Act* applies to inquiries conducted under this section.

Rights of witnesses

(3) Witnesses at inquiries conducted under this section have the right to retain and instruct counsel and all the other rights of witnesses in civil courts.

Offence

(4) Any person who knowingly discloses, without the Commission's consent, evidence taken in private at an inquiry conducted under this section or information likely to identify the witness is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

PART III

MUNICIPAL POLICE SERVICES BOARDS

Police services boards

27.—(1) There shall be a police services board for every municipality that maintains a police force.

Boards of commissioners of police continued as police services boards

(2) Every board of commissioners of police constituted or continued under the *Police Act* or any other Act and in existence on the day this Act comes into force is continued as a police services board.

R.S.O. 1980, c. 381

Name

(3) A board shall be known as "*(insert name of municipality)* Police Services Board".

Three-member boards in smaller municipalities

R.S.O. 1980, c. 31

(4) The board of a municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* does not exceed 25,000 shall consist of,

(a) the head of the municipal council, or another council member appointed by resolution of the council; and

(b) two persons appointed by the Lieutenant Governor in Council.

Five-member boards in larger municipalities

(5) The board of a municipality, other than a regional or metropolitan municipality, whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 25,000 shall consist of,

(a) the head of the municipal council, or another council member appointed by resolution of the council;

(b) one person appointed by resolution of the council; and

(c) three persons appointed by the Lieutenant Governor in Council.

Smaller municipalities, option to expand board

(6) The council of a municipality to which subsection (4) would otherwise apply may determine, by resolution, that the composition of its board shall be as described in subsection (5).

Transition

R.S.O. 1980, c. 381

(7) A resolution passed under clause 8 (2a) (b) of the *Police Act* before the day this Act comes into force shall be deemed to have been passed under subsection (6).

Regional and metropolitan municipalities

(8) The board of a regional or metropolitan municipality shall consist of,

(a) two council members appointed by resolution of the municipal council; and

(b) three persons appointed by the Lieutenant Governor in Council.

Seven-member boards in certain circumstances

R.S.O. 1980, c. 31

(9) The council of a regional or metropolitan municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 300,000 may apply to the Lieutenant Governor in Council for an increase in the size of its board; if the Lieutenant Governor in Council approves the application, the board shall consist of,

(a) the head of the council, or another council member appointed by resolution of the council;

(b) two council members appointed by resolution of the council; and

(c) four persons appointed by the Lieutenant Governor in Council.

Vacancies

(10) If the position of a member appointed by the Lieutenant Governor in Council becomes vacant, the Solicitor General may appoint a replacement to act until the Lieutenant Governor in Council makes a new appointment.

Idem

(11) If the position of a member who is appointed by a municipal council or holds office by virtue of being the head of a municipal council becomes vacant, the board shall notify the council, which shall forthwith appoint a replacement.

Remuneration

(12) The council shall pay the members of the board who are appointed by the Lieutenant Governor in Council or Solicitor General remuneration that is at least equal to the prescribed amount.

Judges and justices of the peace ineligible

(13) No judge or justice of the peace shall be appointed as a member of a board.

Transition, judges and justices of the peace

(14) A judge or justice of the peace who is a member of a board on the day this Act comes into force may continue to be a member until the third anniversary of that day.

Transition, municipalities without boards

(15) In the case of a municipality that is required by subsection (1) to have a police services board and that does not, on the day this Act comes into force, have a board of commissioners of police, the following rules apply:

1. Subsection (1) does not apply to the municipality until the first anniversary of the coming into force of this Act.

2. Until subsection (1) applies to the municipality, the council shall perform the duties and may exercise the powers that this Act imposes and confers on police services boards.

Election of chair

28. The members of a board shall elect a chair at the board's first meeting in each year.

Protection from personal liability

29.—(1) No action or other proceeding for damages shall be instituted against a member of a board for any act done in good faith in the execution or intended execution of his or her duty or for any alleged neglect or default in the execution in good faith of that duty.

Board's liability

(2) Subsection (1) does not relieve a board of liability for a member's acts or omissions, and the board is liable as if that subsection had not been enacted and as if the member were the board's employee.

Board may contract, sue and be sued

30.—(1) A board may contract, sue and be sued in its own name.

Members not liable for board's contracts

(2) The members of a board are not personally liable for the board's contracts.

Responsibilities of boards

31.—(1) A board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

(a) appoint the members of the municipal police force;

(b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;

(c) establish policies for the effective management of the police force;

(d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;

(e) direct the chief of police and monitor his or her performance;

(f) establish an employment equity plan in accordance with section 48 and the regulations, review its implementation by the chief of police and receive regular reports from him or her on that subject;

(g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);

(h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;

(i) establish guidelines for the administration by the chief of police of the public complaints system under Part VI;

(j) review the administration by the chief of police of the public complaints system and receive regular reports from him or her on that subject.

Members of police force under board's jurisdiction

(2) The members of the police force, whether they were appointed by the board or not, are under the board's jurisdiction.

Restriction

(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force.

Idem

(4) The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

Training of board members

(5) The board shall ensure that its members undergo any training that the Solicitor General may provide or require.

Rules re management of police force

(6) The board may, by by-law, make rules for the effective management of the police force.

Guidelines re secondary activities

(7) The board may establish guidelines consistent with section 49 for police officers' disclosure of secondary activities to the chief of police and for the decisions of the chief of police under subsection 49 (4).

Oath of office

32. Before entering on the duties of office, a member of a board shall take an oath or affirmation of office in the prescribed form.

Agreement to constitute joint board R.S.O. 1980, c. 31

33.—(1) Despite any special Act, two or more municipalities whose combined population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 5,000 may enter into an agreement to constitute a joint board.

Idem

(2) The agreement must be authorized by by-laws of the councils of the participating municipalities and requires the consent of their boards.

Composition of board

(3) The joint board shall consist of,

(a) the heads of the councils of the participating municipalities; and

(b) other members appointed by the Lieutenant Governor in Council.

Application of Act to joint boards

(4) The provisions of this Act that apply to boards also apply with necessary modifications to joint boards.

Delegation

34. A board may delegate to two or more of its members any authority conferred on it by this Act, except,

(a) the authority to hear the appeals of police officers found guilty of misconduct under Part V, which must be exercised by a quorum; and

(b) the authority to bargain under Part VIII, which the board may delegate to one or more members.

Meetings

35.—(1) The board shall hold at least four meetings each year.

Quorum

(2) A majority of the members of the board constitutes a quorum.

Proceedings open to the public

(3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that, Exception

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

36. A document purporting to be a by-law of the board signed by a member or purporting to be a copy of such a by-law certified correct by a member is admissible in evidence without proof of the signature or authority of the person signing. Admissibility of documents

37. In performing its duties under this Act, a board has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the board as if it were conducting an inquiry under that Act. Power with respect to witnesses R.S.O. 1980, c. 411

38. A municipal police force shall consist of a chief of police and such other police officers and other employees as the board considers adequate, and shall be provided with the equipment and facilities that the board considers adequate. Municipal police force

39.—(1) Each year, the board shall submit to the municipal council or to each council responsible for maintaining the police force, as the case may be, its estimates for the year. Estimates

(2) The estimates shall be submitted at least one month before the beginning of the fiscal year of the municipality or municipalities, as the case may be; if they are to be submitted to municipalities whose fiscal years begin on different dates, they shall be submitted to all the councils at least one month before the earliest date. Time

(3) The estimates shall show, separately, the amounts that will be required, Idem

(a) to maintain the police force and provide it with equipment and facilities; and

(b) to pay the expenses of the board's operation other than the remuneration of board members.

Commission hearing in case of disagreement

(4) If the council does not approve the board's estimates or disagrees with the board on the number of members of the police force that is adequate or the equipment and facilities that are adequate, the Commission shall determine the question after a hearing.

Reduction or abolition of police force

40.—(1) A board may terminate the employment of a member of the police force for the purpose of abolishing the police force or reducing its size if the Commission consents and if the abolition or reduction does not contravene this Act.

Criteria for Commission's consent

(2) The Commission shall consent to the termination of the employment of a member of the police force under subsection (1) only if,

(a) the member and the board have made an agreement dealing with severance pay or agreed to submit the matter to arbitration; or

(b) the Commission has made an order under subsection (3).

Order imposing arbitration

(3) If the member and the board do not make an agreement dealing with severance pay and do not agree to submit the matter to arbitration, the Commission, if it is of the opinion that it would be appropriate to permit the abolition of the police force or the reduction of its size, may order the member and the board to submit the matter to arbitration and may give any necessary directions in that connection.

Arbitration

(4) Section 124 applies to an arbitration referred to in this section with necessary modifications.

PART IV

POLICE OFFICERS AND OTHER POLICE STAFF

CHIEF OF POLICE

Duties of chief of police

41.—(1) The duties of a chief of police include,

(a) in the case of a municipal police force, administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31 (1);

(b) ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force;

(c) ensuring that the police force provides community-oriented police services;

(d) administering discipline in accordance with Part V;

(e) administering the public complaints system under Part VI;

(f) implementing the employment equity plan established under section 48 and the regulations;

(g) in the case of a municipal police force, reporting to the board at regular intervals on public complaints and on the implementation of the employment equity plan.

Chief of police reports to board

(2) The chief of police reports to the board and shall obey its lawful orders and directions.

POLICE OFFICERS

Duties of police officer

42.—(1) The duties of a police officer include,

(a) preserving the peace;

(b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;

(c) assisting victims of crime;

(d) apprehending criminals and other offenders and others who may lawfully be taken into custody;

(e) laying charges, prosecuting and participating in prosecutions;

(f) executing warrants that are to be executed by police officers and performing related duties;

(g) performing the lawful duties that the chief of police assigns;

(h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;

(i) completing the prescribed training.

Power to act throughout Ontario

(2) A police officer has authority to act as such throughout Ontario.

Powers and duties of common law constable

(3) A police officer has the powers and duties ascribed to a constable at common law.

Criteria for hiring

43.—(1) No person shall be appointed as a police officer unless he or she,

(a) is a Canadian citizen or a permanent resident of Canada;

(b) is at least eighteen years of age;

(c) is physically and mentally able to perform the duties of the position, having regard to his or her own safety and the safety of members of the public;

(d) is of good moral character and habits; and

(e) has successfully completed at least four years of secondary school education or its equivalent.

Idem

(2) A candidate for appointment as a police officer shall provide any relevant information or material that is lawfully requested in connection with his or her application.

Probationary period

44.—(1) A municipal police officer's probationary period begins on the day he or she is appointed and ends on the later of,

(a) the first anniversary of the day of appointment;

(b) the first anniversary of the day the police officer completes an initial period of training at the Ontario Police College.

Time for completing initial training

(2) The police officer shall complete the initial period of training within six months of the day of appointment.

Termination of employment during probationary period

(3) A board may terminate a police officer's employment at any time during his or her probationary period but, before doing so, shall give the police officer reasonable information

with respect to the reasons for the termination and an opportunity to reply, orally or in writing, as the board may determine.

(4) Subsections (1), (2) and (3) do not apply to a police officer who has completed a probationary period with another municipal police force. Only one probationary period

45. A person appointed to be a police officer shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form. Oaths of office and secrecy

46. No municipal police officer shall engage in political activity, except as the regulations permit. Political activity

MEMBERS OF POLICE FORCES

47.—(1) Subject to subsection (2), if a member of a municipal police force becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the board shall accommodate his or her needs in accordance with the *Human Rights Code, 1981*. Accommodation of needs of disabled member of municipal police force 1981, c. 53

(2) The board may discharge the member, or retire him or her if entitled to retire, if, after holding a hearing at which the evidence of two legally qualified medical practitioners is received, the board, Undue hardship

(a) determines, on the basis of that evidence, that the member is mentally or physically disabled and as a result incapable of performing the essential duties of the position, and what duties the member is capable of performing; and

(b) concludes that the member's needs cannot be accommodated without undue hardship on the board.

(3) Subject to subsection (4), if a member of the Ontario Provincial Police becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the Commissioner shall accommodate the member's needs in accordance with the *Human Rights Code, 1981*. Idem. O.P.P.

(4) The member may be discharged, or retired if entitled to retire, if, after holding a hearing at which the evidence of two legally qualified medical practitioners is received, the Commissioner or a person whom he or she designates, Idem

(a) determines, on the basis of that evidence, that the member is mentally or physically disabled and as a result incapable of performing the essential duties of the position, and what duties the member is capable of performing; and

(b) concludes that the member's needs cannot be accommodated without undue hardship on the Crown in right of Ontario.

Appeal

(5) A member of a police force who is discharged or retired under subsection (2) or (4) may appeal to the Commission by serving a written notice on the Commission and on the board or the Commissioner, as the case may be, within thirty days of receiving notice of the decision.

Powers of Commission

(6) The Commission may confirm, alter or revoke the decision or may require the board or Commissioner, as the case may be, to rehear the matter.

Decision

(7) The Commission shall promptly give written notice of its decision, with reasons, to the appellant and to the board or Commissioner, as the case may be.

Participation of members of Commission

(8) No member of the Commission shall participate in the decision unless he or she was present throughout the hearing of the appeal and, except with the consent of the appellant, no decision of the Commission shall be given unless all members who were present throughout the hearing participate in the decision.

Employment equity plans

48.—(1) Every police force shall have an employment equity plan prepared in accordance with this section and the regulations.

Contents of plan

(2) An employment equity plan shall provide for,

(a) the elimination of systemic barriers to the recruitment and promotion of persons who are members of prescribed groups;

(b) the implementation of positive measures with respect to the recruitment and promotion of those persons, so as to make the police force more representative of the community or communities it serves; and

(c) specific goals and timetables with respect to the elimination of systemic barriers, the implementation

of positive measures and the composition of the police force.

Board to prepare plan for municipal police force

(3) In the case of a municipal police force, the board shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Commissioner to prepare plan for O.P.P.

(4) In the case of the Ontario Provincial Police, the Commissioner shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Solicitor General

(5) Before approving the employment equity plan, the Solicitor General may require that changes be made to it.

Restrictions on secondary activities

49.—(1) A member of a police force shall not engage in any activity,

(a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;

(b) that places him or her in a position of conflict of interest, or is likely to do so;

(c) that would otherwise constitute full-time employment for another person; or

(d) in which he or she has an advantage derived from employment as a member of a police force.

Exception, paid duty

(2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force.

Disclosure to chief of police

(3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police.

Decision of chief of police

(4) The chief of police shall decide whether the member is permitted to engage in the activity and the member shall comply with that decision.

Liability for torts

50.—(1) The board or the Crown in right of Ontario, as the case may be, is liable in respect of torts committed by members of the police force in the course of their employment.

Indemnification of member of municipal police force

(2) The board may, in accordance with the guidelines established under clause 31 (1) (h), indemnify a member of the police force for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of any other proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.

Agreement

(3) The police force and the board may, in an agreement made under Part VIII, provide for indemnification for the legal costs of members of the police force, except the legal costs of a member who is found guilty of a criminal offence; if such an agreement exists, the board shall indemnify members in accordance with the agreement and subsection (2) does not apply.

Council responsible for board's liabilities

(4) The council is responsible for the liabilities incurred by the board under subsections (1), (2) and (3).

Indemnification of member of O.P.P.

(5) The Treasurer of Ontario may indemnify, out of the Consolidated Revenue Fund, a member of the Ontario Provincial Police for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of any other proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.

Agreement

R.S.O. 1980, c. 418

(6) The Ontario Provincial Police and the Crown in right of Ontario may, in an agreement made under the *Public Service Act*, provide for indemnification for the legal costs of members of the police force, except the legal costs of a member who is found guilty of a criminal offence; if such an agreement exists, the Treasurer shall indemnify members in accordance with the agreement and subsection (5) does not apply.

Police cadets

51.—(1) With the board's approval, a municipal chief of police may appoint persons as police cadets to undergo training.

Idem

(2) A police cadet is a member of the municipal police force.

Auxiliary members of municipal police force

52.—(1) With the Commission's approval, a board may appoint auxiliary members of the police force.

Notice of suspension or termination

(2) If the board suspends or terminates the appointment of an auxiliary member of the police force, it shall promptly give the Commission written notice of the suspension or termination.

Auxiliary members of O.P.P.

(3) The Commissioner may appoint auxiliary members of the Ontario Provincial Police.

Authority of auxiliary members of police force

(4) An auxiliary member of a police force has the authority of a police officer if he or she is accompanied or supervised by a police officer and is authorized to perform police duties by the chief of police.

Restriction

(5) The chief of police may authorize an auxiliary member of the police force to perform police duties only in special circumstances, including an emergency, that the police officers of the police force are not sufficiently numerous to deal with.

Oaths of office and secrecy

(6) A person appointed to be an auxiliary member of a police force shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

SPECIAL CONSTABLES

Special constables appointed by board

53.—(1) With the Commission's approval, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient.

Special constables appointed by Commissioner

(2) With the Commission's approval, the Commissioner may appoint a special constable to act for the period, area and purpose that the Commissioner considers expedient.

Powers of police officer

(3) The appointment of a special constable may confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment.

Restriction

(4) A special constable shall not be employed by a police force to perform on a permanent basis, whether part-time or full-time, all the usual duties of a police officer.

Idem

(5) Subsection (4) does not prohibit police forces from employing special constables to escort and convey persons in custody and to perform duties related to the responsibilities of boards under the *Court Security Act*.

R.S.O. 1980, c. 381

Suspension or termination of appointment

(6) The power to appoint a special constable includes the power to suspend or terminate the appointment, but if a board or the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission.

Commission

(7) The Commission also has power to suspend or terminate the appointment of a special constable.

Information and opportunity to reply

(8) Before a special constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the board, Commissioner or Commission, as the case may be, may determine.

Oaths of office and secrecy

(9) A person appointed to be a special constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

FIRST NATIONS CONSTABLES

First Nations Constables

54.—(1) With the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specified duties.

Further approval

R.S.C. 1985, c. I-5

(2) If the specified duties of a First Nations Constable relate to a reserve as defined in the *Indian Act* (Canada), the appointment also requires the approval of the reserve's police governing authority or band council.

Powers of police officer

(3) The appointment of a First Nations Constable confers on him or her the powers of a police officer for the purpose of carrying out his or her specified duties.

Duty to consult

(4) The Commissioner shall not suspend or terminate the appointment of a First Nations Constable whose specified duties relate to a reserve without first consulting with the police governing authority or band council that approved the appointment.

Suspension or termination of appointment

(5) The power to appoint a First Nations Constable includes the power to suspend or terminate the appointment, but if the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission.

(6) The Commission also has power to suspend or terminate the appointment of a First Nations Constable. Commission

(7) Before a First Nations Constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the Commissioner or Commission, as the case may be, may determine. Information and opportunity to reply

(8) A person appointed to be a First Nations Constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form. Oaths of office and secrecy

EMERGENCIES

55.—(1) In an emergency, the Solicitor General may make an agreement with the Crown in right of Canada or of another province or with any of its agencies for the provision of police services. Emergencies

(2) The agreement authorizes all peace officers to whom it relates to act as police officers in the area to which the agreement relates. Authority to act as police officers

(3) For the purpose of the *Workers' Compensation Act*, the relationship between a member of a police force and the body that employs him or her continues as if an agreement had not been made under this section. Application of R.S.O. 1980, c. 539

(4) If the services of the Canadian Forces are provided under this section, the municipality in whose territory the services are required shall pay all the related expenses. Expense of calling out Canadian Forces

(5) Subject to sections 33 and 34 of the *National Defence Act* (Canada), while an agreement made under this section is in force, no member of a police force that has jurisdiction in the area to which the agreement relates shall resign without the consent of the chief of police. Resignation during emergency prohibited R.S.C. 1985, c. N-5

PART V

Disciplinary Proceedings

56. A police officer is guilty of misconduct if he or she, Misconduct

(a) commits an offence described in a prescribed code of conduct;

(b) contravenes section 46 (political activity);

(c) engages in an activity that contravenes subsection 49 (1) (secondary activities) without the permission of his or her chief of police, being aware that the activity may contravene that subsection;

(d) contravenes subsection 55 (5) (resignation during emergency);

(e) contravenes section 57 (inducing misconduct, withholding services);

(f) contravenes subsection 96 (4) (photography at hearing);

(g) contravenes subsection 100 (6) (obstructing Police Complaints Commissioner);

(h) contravenes subsection 108 (2) (confidentiality);

(i) contravenes section 117 (trade union membership);

(j) deals with personal property, other than money or a firearm, in a manner that is not consistent with section 132;

(k) deals with money in a manner that is not consistent with section 133;

(l) deals with a firearm in a manner that is not consistent with section 134;

(m) contravenes a regulation made under paragraph 15 (equipment), 16 (use of force), 17 (standards of dress, police uniforms) 20 (police pursuits) or 21 (records) of subsection 135 (1).

Inducing misconduct

57.—(1) No person, including a member of a police force, shall,

(a) induce or attempt to induce a member of a police force to withhold his or her services; or

(b) induce or attempt to induce a police officer to commit misconduct.

Withholding services

(2) No member of a police force shall withhold his or her services.

Offence

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more

than $2,000 or to imprisonment for a term of not more than one year, or to both.

(4) No prosecution shall be instituted under this section without the consent of the Solicitor General. Consent of Solicitor General

58.—(1) Any apparent or alleged misconduct by a police officer shall be investigated by his or her chief of police. Chief to investigate misconduct

(2) When a complaint is made under Part VI with respect to apparent or alleged misconduct by a police officer, the following rules apply: Effect of complaint

1. The complaint shall be dealt with in accordance with Part VI, and recourse shall be had to this Part only as Part VI permits.

2. Any investigation of the matter under this Part and any hearing under section 60 are suspended as soon as the chief of police becomes aware that a complaint has been made.

59.—(1) If the chief of police investigates apparent or alleged misconduct and concludes that the police officer is guilty of misconduct but that the misconduct is not of a serious nature, the following rules apply: Procedure in case of misconduct not of serious nature

1. The chief of police shall provide the police officer with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

2. The chief of police may then admonish the police officer and may cause an entry concerning the matter, the action taken and the police officer's reply to be made in his or her employment record.

3. If the police officer refuses to accept the admonition, the chief of police shall not cause particulars to be recorded without first holding a hearing.

(2) An entry made in the police officer's employment record under paragraph 2 of subsection (1) shall be expunged from the record two years after being made if during that time no other entries concerning misconduct have been made in the record under this Part or Part VI. Expungement

(3) Nothing in this section affects agreements between boards and police officers or associations that permit other penalties than admonition to be administered, if the police Agreement

officer in question consents, without a hearing under section 60.

Hearing

60.—(1) A chief of police may hold a hearing to determine whether a police officer belonging to his or her police force is guilty of misconduct.

Prosecutor

(2) The chief of police shall designate to be prosecutor at the hearing,

(a) a police officer of the rank of sergeant or higher;

(b) if there is none of that rank, a police officer of a rank equal to or higher than that of the police officer who is the subject of the hearing; or

(c) a legal counsel.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Examination of evidence

(4) Before the hearing, the police officer shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence.

Idem

(5) If the hearing is being conducted as a result of a complaint made under Part VI, the complainant shall likewise be given an opportunity to examine evidence and reports before the hearing.

Police officer not required to give evidence
R.S.O. 1980, c. 484

(6) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(7) In the case of a hearing that is being conducted as a result of a complaint made under Part VI, no statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Person conducting hearing not to communicate in relation to subject-matter of hearing

(8) The person conducting the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or person's counsel or representative, unless the police officer and the prosecutor receive notice and have an opportunity to participate.

(9) However, the person conducting the hearing may seek legal advice from an adviser independent of the police officer and the prosecutor, and in that case the nature of the advice shall be communicated to them so that they make submissions as to the law. Exception

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them. Release of exhibits

(11) If the police officer is charged with an offence under a law of Canada or of a province or territory in connection with the alleged misconduct, the hearing shall continue unless the Crown Attorney advises the chief of police that it should be stayed until the conclusion of the court proceedings. Stay

(12) If six months have elapsed since the facts on which an allegation of misconduct is based first came to the attention of the chief of police, no notice of hearing shall be served unless the board (in the case of a municipal police officer) or the Commissioner (in the case of a member of the Ontario Provincial Police) is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. Six-month limitation period, exception

61.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may, Penalties

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

(f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

(2) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day. Calculation

Idem

(3) Instead of or in addition to a penalty described in subsection (1), the chief of police may reprimand the police officer.

Dismissal and demotion

(4) The chief of police shall not impose the penalties of dismissal or demotion unless the notice of hearing or a subsequent notice served on the police officer indicated that they might be imposed if the misconduct were proved on clear and convincing evidence.

Notice of decision

(5) The chief of police shall promptly give written notice of the decision, with reasons, to the police officer and, in the case of a municipal police force, to the board.

Idem

(6) If the hearing was conducted as a result of a complaint made under Part VI, the chief of police shall also give notice of the decision, with reasons, to the complainant and to the Police Complaints Commissioner.

Police officer's employment record

(7) No reference to the allegations of misconduct or the hearing shall be made in the police officer's employment record, and the matter shall not be taken into account for any purpose relating to his or her employment, unless,

(a) misconduct is proved on clear and convincing evidence; or

(b) the police officer resigns before the matter is finally disposed of.

Misconduct by municipal chief of police

62.—(1) A board may hold a hearing to determine whether the chief of police is guilty of misconduct, and this Part applies with necessary modifications.

Commission hearing

(2) The chief of police may, by serving a notice to that effect on the board and the Commission, require that the Commission hold the hearing instead of the board.

Appeal to board

63.—(1) A municipal police officer on whom a penalty is imposed under section 61 may appeal to the board by serving a notice of appeal on the board and the chief of police within fifteen days of receiving notice of the decision.

Hearing

(2) The board shall hear the appeal on the record, but may receive new or additional evidence as it considers just.

Powers of board

(3) The board may confirm, alter or revoke the decision or may require the chief of police to rehear the matter.

(4) The board shall promptly give written notice of its decision, with reasons, to the chief of police and the police officer. Board's decision

(5) No member of the board shall participate in the decision unless he or she was present throughout the hearing of the appeal and, except with the police officer's consent, no decision of the board shall be given unless all members who were present throughout the hearing participate in the decision. Participation of members

(6) The members of the board who participate in the decision shall not communicate directly or indirectly in relation to the subject-matter of the appeal with any person or person's counsel or representative, unless the police officer and the chief of police receive notice and have an opportunity to participate. Members not to communicate in relation to subject-matter of appeal

(7) However, the board may seek legal advice from an adviser independent of the police officer and the chief of police, and in that case the nature of the advice shall be communicated to them so that they may make submissions as to the law. Exception

(8) The police officer may appeal to the Commission from the board's decision by serving a notice of appeal on the Commission, the board and the chief of police within thirty days of receiving notice of the decision. Further appeal to Commission

64. Instead of hearing a police officer's appeal under section 63, the board may, on its own initiative or on the application of the police officer or the chief of police, require the Commission to hear the appeal. Hearing by Commission instead of board

65. A member of the Ontario Provincial Police on whom a penalty is imposed under section 61 may appeal to the Commission by serving a written notice on the Commission and the Commissioner within thirty days of receiving notice of the decision. O.P.P., appeal to Commission from Commissioner's decision

66. If the hearing was conducted as a result of a complaint made under Part VI, sections 63 and 65 do not apply and the police officer may only appeal in accordance with that Part. Exception in case of public complaint

67. Subsections 63 (2) to (7) apply to appeals heard by the Commission as if references to the board were references to the Commission and, in the case of an appeal from a board's decision, as if references to the chief of police were references to the board. Appeals to Commission

Extension of time for appeals

68. The board or Commission may grant an extension of the time provided for giving it a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Delegation

69. A chief of police may authorize any member of the police force to exercise any power or perform any duty of the chief of police referred to in this Part, subject to the following rules:

1. A hearing under section 60 shall be conducted by a police officer of the rank of inspector or higher.

2. A police officer from another police force who meets the requirements of paragraph 1 may conduct the hearing, with the approval of his or her chief of police.

3. The measures referred to in subsection 59 (1) (procedure in case of misconduct not of serious nature) shall be taken by a police officer of the rank of inspector or higher.

Notice

70.—(1) A notice required to be given under this Part is sufficiently given if delivered personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Suspension

71.—(1) If a police officer is suspected of or charged with an offence under a law of Canada or of a province or territory or is suspected of misconduct, the chief of police may suspend him or her from duty with pay.

Revocation and reimposition of suspension

(2) The chief of police may revoke the suspension and later reimpose it, repeatedly if necessary, as he or she considers appropriate.

Duration of suspension

(3) Unless the chief of police revokes the suspension, it shall continue until the final disposition of the proceeding in which the police officer's conduct is at issue.

Conditions of suspension

(4) While suspended, the police officer shall not exercise any of the powers vested in him or her as a police officer or

wear or use clothing or equipment that was issued to him or her in that capacity.

(5) If a police officer is convicted of an offence and sentenced to a term of imprisonment, the chief of police may suspend him or her without pay, even if the conviction or sentence is under appeal. Suspension without pay

72.—(1) If a police officer is suspended with pay, the pay for the period of suspension shall be reduced by the amount that he or she earns from other employment during that period. Earnings from other employment

(2) Subsection (1) does not apply to earnings from other employment that was commenced before the period of suspension. Exception

PART VI

PUBLIC COMPLAINTS

73.—(1) In this Part, Definitions

"bureau" means the public complaints investigation bureau of a police force;

"Commissioner" means the Police Complaints Commissioner appointed under section 99.

(2) In this Part, unless the context indicates otherwise, a reference to a police officer is a reference to the police officer who is the subject of a complaint. Police officer

74. This Part shall be administered by the Attorney General. Attorney General

75. Complaints by members of the public about the conduct of police officers shall be dealt with in accordance with this Part. Application of Part

76.—(1) Every chief of police shall establish and maintain a public complaints investigation bureau. Bureau

(2) The chief of police shall ensure that the bureau is supplied with sufficient staff to perform its duties effectively. Staff

(3) If the police force has fewer than twenty police officers, the bureau of another police force may, under an agreement made in accordance with section 7 (municipal agreements for sharing police services) or 10 (municipal agreements for provi- Small police forces

sion of police services by O.P.P.), act as the first-named police force's bureau as well; in that case, subsections (1) and (2) do not apply.

INITIAL HANDLING OF COMPLAINT

Complaint by member of public

77.—(1) A member of the public may make a complaint about the conduct of a police officer, orally or in writing,

(a) at the bureau of the police force to which the complaint relates, or at a station or detachment of that police force; or

(b) at an office of the Commissioner; or

(c) at any bureau, police station or detachment.

Recording of complaint

(2) The person who receives the complaint shall record it on a form provided by the Commissioner and shall give a copy of the completed form to the person who makes the complaint.

Information

(3) The person who makes the complaint shall also be given a statement, in a form provided by the Commissioner, that sets out the procedures followed in dealing with a complaint and describes the rights of a complainant.

Preservation of evidence, preliminary investigation

(4) The person on duty who is in charge of a place when a complaint is received shall,

(a) take all reasonable steps to ensure that evidence that might otherwise be lost is secured immediately;

(b) if he or she considers it appropriate, ensure that a preliminary investigation is conducted immediately; and

(c) ensure that a report on the evidence and on the preliminary investigation, if any, is forthwith prepared and attached to the complaint.

Copies of complaint

(5) The person who records the complaint shall forthwith send copies of it,

(a) to the bureau, the chief of police and the Commissioner, in the case of a complaint made at a station or detachment of the police force to which it relates;

(b) to the chief of police and the Commissioner, in the case of a complaint made at the bureau of the police force to which it relates;

(c) to the bureau and the chief of police of the police force to which it relates, in the case of a complaint made at an office of the Commissioner;

(d) to the Commissioner, in the case of a complaint made at a bureau, station or detachment of a different police force than the one to which it relates.

Complaint made to another police force

(6) If a complaint was made at a bureau, station or detachment of a different police force than the one to which it relates, the Commissioner shall forthwith send copies of the complaint and of any report prepared under subsection (4) to the appropriate bureau.

Complaint made more than six months after incident

(7) A complaint that is made more than six months after the incident to which it relates shall be further dealt with under this Part only if the Commissioner so directs.

Complaint by Commissioner

78.—(1) In exceptional circumstances, the Attorney General may direct the Commissioner to make a complaint about the conduct of a police officer.

Recording of complaint, copies

(2) The Commissioner shall cause the complaint to be recorded and shall send copies to the bureau and the chief of police of the force to which it relates.

Complainant

(3) The Commissioner is the complainant in the case of a complaint made under this section.

Non-application of certain provisions

(4) Subsection 77 (7) and sections 80 (notice to potential complainant), 81 (classification of complaint), 82 (reclassification), 83 (informal resolution) and 85 (decision by chief of police re no further action) do not apply to complaints made under this section.

Notice to police officer

79.—(1) When the bureau receives a complaint, the person in charge shall forthwith give the police officer notice of the substance of the complaint, unless in the person's opinion to do so might prejudice the investigation.

Form

(2) The notice shall be written on a form provided by the Commissioner.

Notice to potential complainant

80.—(1) If the complaint is made by a person who was not directly affected by the incident and did not observe it, the Commissioner shall, as soon as possible after receiving the

complaint, attempt to find the person who was directly affected by the incident or who observed it and send him or her a notice.

Idem

(2) The notice shall indicate that a complaint has been made, that the person is entitled to be the complainant in the matter and that the complaint will not be dealt with further unless he or she is the complainant.

Idem

(3) The notice shall also include information about the procedures followed in dealing with a complaint and the rights of a complainant.

No further action

(4) The complaint shall not be further dealt with under this Part if,

(a) no person who was directly affected by the incident or who observed it can be found; or

(b) the person to whom the Commissioner sends the notice does not, within thirty days of the date on which it is sent, file with the Commissioner a request to be the complainant in the matter.

Disciplinary proceeding

(5) However, if a disciplinary proceeding is commenced against the police officer in respect of the complaint, the chief of police shall notify the Commissioner of the proceeding and of its result, and the Commissioner shall then notify the person who made the complaint.

Reopening of matter

(6) If the person to whom the Commissioner sends the notice files a request to be the complainant in the matter after the thirty-day period referred to in subsection (4), the Commissioner may cause the matter to be reopened despite the late filing if he or she considers it advisable to do so.

Classification of complaint

81.—(1) When the bureau receives a complaint, the person in charge shall consider whether it relates to possible misconduct under section 56, to other matters or to both.

Idem

(2) If the person in charge is of the opinion that all or part of the complaint relates only to other matters than possible misconduct, he or she may, with the Commissioner's consent, classify the complaint or part as an inquiry.

Notice and investigation

(3) When all or part of a complaint has been classified as an inquiry, the person in charge shall forthwith notify the complainant and the police officer of the fact and may cause the inquiry to be investigated.

Response to complainant

(4) Not more than sixty days after the bureau receives the original complaint, the person in charge shall send the complainant a written response to the inquiry and shall also send the Commissioner a copy of the response, together with a summary of the results of any investigation.

Effect

(5) A complaint or part of a complaint that is classified as an inquiry and not reclassified as a complaint and that is the subject of a response under this section need not be dealt with further under this Part.

Reclassification

82.—(1) During the course of the investigation of an inquiry, if the person in charge concludes that all or part of it relates to possible misconduct, he or she may reclassify the inquiry or part as a complaint.

Idem

(2) After receiving a summary of the results of the investigation of an inquiry, the Commissioner may direct the person in charge to reclassify all or part of it as a complaint.

Notice

(3) The person in charge shall forthwith notify the complainant and the police officer of the reclassification, and shall also notify the Commissioner in the case of a reclassification under subsection (1).

Effect

(4) An inquiry or part of an inquiry that is reclassified as a complaint shall be dealt with as such under this Part.

INFORMAL RESOLUTION, WITHDRAWAL

Informal resolution by person in charge of bureau

83.—(1) If the complainant and the police officer consent, the complaint may be resolved informally by the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or by the Commissioner after that time.

Board's consent

(2) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, its consent is also required for an informal resolution.

Record

(3) When a complaint is resolved informally, the resolution shall be recorded on a form provided by the Commissioner and signed by the complainant and police officer.

Copies

(4) Copies of the record shall be provided to the complainant and the police officer, and to the Commissioner if the complaint was resolved by the person in charge of the bureau.

Commissioner's decision that complaint to continue

(5) If the Commissioner is of the opinion that the informal resolution is the result of a misunderstanding or a threat or

other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the informal resolution.

Notice

(6) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

Withdrawal of complaint

84.—(1) The complainant may withdraw the complaint by giving a notice of withdrawal to the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or to the Commissioner after that time.

Idem, complaint made by Commissioner

(2) If the complaint was made under section 78, the Commissioner may withdraw it by giving a notice of withdrawal to the chief of police and a copy to the police officer; subsection (3) applies to the withdrawal but subsections (4) to (7) do not.

Board's consent

(3) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, it shall not be withdrawn without the board's consent.

Copies

(4) A copy of the notice of withdrawal shall be provided to the police officer, and to the Commissioner if the person in charge of the bureau received the notice.

Form

(5) The notice of withdrawal shall be written on a form provided by the Commissioner.

Commissioner's decision that complaint to continue

(6) If the Commissioner is of the opinion that the withdrawal is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the withdrawal.

Notice

(7) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

POWERS OF CHIEF OF POLICE

Decision re no further action

85.—(1) At any time before making a decision under section 90, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith.

Notice

(2) The chief of police shall give the Commissioner, the complainant and the police officer notice of the decision.

Power to commence or continue disciplinary proceeding

86.—(1) The chief of police may commence or continue a disciplinary proceeding against a police officer under Part V even if,

(a) the complaint is withdrawn or is resolved informally; or

(b) the complaint is not to be further dealt with under this Part because of subsection 77 (7) (complaint filed more than six months after incident) or section 80 (complaint made by person not directly affected), or because of a decision by the chief of police under section 85.

Notice to Commissioner and complainant

(2) The chief of police shall give the Commissioner and the complainant notice of a decision to commence or continue a disciplinary proceeding in the circumstances described in subsection (1), and shall also give them notice of the results of the proceeding.

INVESTIGATION OF COMPLAINT

Investigation

87.—(1) The person in charge of the bureau shall cause an investigation to be conducted into the complaint in accordance with the prescribed procedures.

Interim reports

(2) During the course of the investigation, the person in charge shall send the Commissioner, the complainant and the police officer interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the bureau receives the complaint.

Exception

(4) If there are no new matters to report, the person in charge may send the Commissioner, the complainant and the police officer a notice to that effect instead of an interim report.

Idem

(5) The person in charge may withhold an interim report from the complainant or the police officer if, in his or her opinion, it is desirable to do so in order to avoid prejudicing the investigation, but in that case shall forthwith notify the Commissioner of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the person in charge shall cause a final report to be prepared and shall send copies of it to the Commissioner, the chief of police, the complainant and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the complainant, the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

Further investigation

(8) After receiving a final report, the Commissioner may require the chief of police to have the complaint investigated further.

Idem

(9) A summary of the results of any further investigation shall be sent to the persons who received the final report.

Forms

(10) The interim reports and final report shall be written on forms provided by the Commissioner.

Investigation by Commissioner

88.—(1) The Commissioner may conduct the investigation into the complaint, instead of the bureau,

(a) for any reason, after receiving the first interim report or after the thirty-day period referred to in subsection 87 (3) has expired;

(b) if the complainant has commenced a court proceeding against the police officer, the police force or the chief of police, the police services board or the municipality (in the case of a municipal police force) or the Crown in right of Ontario (in the case of the Ontario Provincial Police) in connection with the incident to which the complaint relates;

(c) if the Commissioner has reasonable grounds to believe that undue delay or other unusual circumstances have affected the bureau's investigation or the preparation of its final report; or

(d) if the chief of police requests that the Commissioner conduct the investigation.

Duty of chief of police

(2) The chief of police, if he or she becomes aware that the complainant has commenced a court proceeding of the kind described in clause (1) (b), shall forthwith notify the Commissioner of the fact.

Complaints concerning more than one police force

(3) If the complaint concerns more than one police force, the Commissioner shall conduct the investigation.

Notice

(4) When the Commissioner decides to conduct the investigation, he or she shall forthwith notify the chief of police, giving reasons in the case of a decision under clause (1) (a) or (c).

Effect on bureau

(5) When the Commissioner notifies the chief of police of a decision to conduct the investigation, the person in charge of the bureau shall forthwith end any investigation begun by the bureau and send to the Commissioner the evidence that has been gathered and the documents relating to the complaint.

Manner of conducting investigation

(6) Section 87 applies to the Commissioner's investigation, with necessary modifications, except that the Commissioner shall send the first interim report not more than thirty days after giving notice of the decision to conduct the investigation.

Investigation of complaint made by Commissioner

89.—(1) If the complaint was made under section 78, the Commissioner shall conduct the investigation in accordance with the prescribed procedures, and section 87 does not apply.

Interim reports

(2) The Commissioner shall send the police officer and the chief of police interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the Commissioner makes the complaint.

Exception

(4) If there are no new matters to report, the Commissioner may send the police officer and the chief of police a notice to that effect instead of an interim report.

Idem

(5) The Commissioner may withhold an interim report from the police officer if, in his or her opinion, it is desirable to do so to avoid prejudicing the investigation, but in that case shall forthwith notify the chief of police of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the Commissioner shall cause a final report to be prepared and shall send copies of it to the chief of police and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

DECISION BY CHIEF OF POLICE

Review of final report

90.—(1) The chief of police shall review the final report of the investigation of a complaint and may order further investigation if he or she considers it advisable.

Results of further investigation

(2) A summary of the results of any further investigation shall be sent to the persons who received the final report, and to the Commissioner if he or she conducted the original investigation.

Decision

(3) After reviewing the final report and the results of any further investigation, the chief of police shall,

(a) decide that no further action is necessary;

(b) admonish the police officer regarding the matter in accordance with subsection 59 (1);

(c) hold a disciplinary hearing under section 60;

(d) order that all or part of the complaint be the subject of a hearing by a board of inquiry; or

(e) cause an information to be laid against the police officer and refer the matter to the Crown Attorney for prosecution.

Idem

(4) If the chief of police decides to hold a disciplinary hearing under section 60 or orders a hearing by a board of inquiry, he or she may at the same time cause an information to be laid against the police officer.

Notice

(5) The chief of police shall give written notice of the decision to the Commissioner, the complainant and the police officer, with reasons in the case of a decision that no further action is necessary or a decision to admonish the police officer.

Idem

(6) If the chief of police orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

(7) The chief of police shall give notice of the decision within six months of receiving the final report, unless the Commissioner grants an extension. Six-month time limit

(8) If the chief of police does not give notice of the decision within the six-month period and is not granted an extension, he or she shall be deemed to have decided that no further action is necessary. Deemed decision

REVIEW BY COMMISSIONER

91.—(1) The Commissioner shall review the decision of the chief of police, Review by Commissioner

(a) at the complainant's or police officer's request, in the case of a decision under section 90 to admonish the police officer;

(b) at the complainant's request, in the case of a decision under section 90 that no further action is necessary;

(c) at the complainant's request, in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(2) The Commissioner may, if in his or her opinion it is in the public interest to do so, review the decision of the chief of police, Idem

(a) in the case of a decision under section 90 to admonish the police officer;

(b) in the case of a decision under section 90 that no further action is necessary;

(c) in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(3) The Commissioner shall, at the complainant's request, review the decision made in a disciplinary hearing under section 60 arising out of a complaint. Idem

(4) The complainant or police officer may request a review by the Commissioner only within thirty days of receiving notice of the decision, unless the Commissioner grants an extension. Thirty-day limit

Complaint made by Commissioner

(5) In the case of a complaint made under section 78, the Commissioner may review,

(a) a decision by the chief of police to admonish the police officer;

(b) a decision by the chief of police that no further action is necessary;

(c) the decision made in a disciplinary hearing under section 60 arising out of the complaint.

Commissioner's decision

(6) After conducting the review, the Commissioner may decide to take no further action, or may order a hearing by a board of inquiry if he or she believes it to be necessary in the public interest.

Notice

(7) The Commissioner shall forthwith give written notice of his or her decision, with reasons in the case of a decision to take no further action, to the chief of police, the complainant and the police officer.

Idem

(8) If the Commissioner orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

HEARING BY BOARD OF INQUIRY

Police officer's appeal to board

92.—(1) If a penalty is imposed on a police officer after a disciplinary hearing under section 60 that was conducted as a result of the complaint, he or she may appeal to a board of inquiry by serving a notice of appeal on the Commissioner, the chair of the panel and the chief of police within fifteen days of receiving notice of the decision.

Notice to complainant

(2) The Commissioner shall forthwith notify the complainant of the appeal.

Extension of time for appeal

(3) A member of the panel who was appointed on a recommendation made under subsection 103 (2) may grant an extension of the time provided for serving a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Appeal to be combined with other hearing

(4) The hearing of the police officer's appeal and any hearing ordered by the Commissioner under section 91 shall be combined.

Constitution of board

93.—(1) A board of inquiry shall be constituted,

(a) when the chief of police orders under section 90 that a matter be heard by a board of inquiry;

(b) when the Commissioner orders a hearing under section 91; and

(c) when a police officer appeals under section 92.

Assignment of members to board

(2) The chair of the panel shall assign the following members of the panel to the board of inquiry, choosing members from the area where the complaint arose if possible:

1. As presiding officer, a member who was appointed on a recommendation made under subsection 103 (2).

2. A member who was appointed on a recommendation made under subsection 103 (3).

3. A member who was appointed on a recommendation made under subsection 103 (4).

Complaint against chief of police

(3) In the case of a complaint against a chief of police, the board of inquiry shall include, instead of a member of the panel who was appointed on a recommendation made under subsection 103 (3), a person, other than a police officer or a member of the Law Society of Upper Canada, appointed to the board of inquiry by the chair of the panel on the recommendation of the Ontario Association of Chiefs of Police.

New hearing, exception

94.—(1) The hearing before the board of inquiry shall be a new hearing, unless it follows a disciplinary hearing under section 60; in that case it shall be on the record, but the board may receive new or additional evidence as it considers just.

Record of disciplinary hearing

(2) If a board is constituted following a disciplinary hearing, the chief of police shall cause a record of the hearing to be prepared, at the Commissioner's expense if the Commissioner ordered the hearing before the board.

Idem

(3) The record shall include a transcript and shall be accompanied by the documents, physical evidence and exhibits considered at the disciplinary hearing.

Parties

95.—(1) The parties to a hearing are,

(a) the complainant;

(b) the police officer;

(c) the Commissioner; and

(d) the chief of police, in the case of an appeal by the police officer.

Idem

(2) The board of inquiry may add parties at any stage of the hearing on the conditions it considers proper.

Carriage

(3) In the case of a hearing ordered by the chief of police or by the Commissioner, the Commissioner has carriage of the matter and, in the case of an appeal by the police officer, the police officer has carriage.

Statement of alleged misconduct

(4) In the case of a hearing ordered by the chief of police or by the Commissioner, the chief of police or the Commissioner, as the case may be, shall provide the parties with a concise statement of the allegations of misconduct to be heard.

Notice of hearing

96.—(1) The board of inquiry shall appoint a time for the hearing and notify the parties.

Examination of evidence

(2) Before the hearing, the police officer and the complainant shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence at the hearing.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Application of 1984, c. 11, s. 146

(4) Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to the hearing.

Police officer not required to give evidence

R.S.O. 1980, c. 484

(5) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(6) No statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Board not to communicate in relation to subject-matter of hearing

(7) The board of inquiry shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or party's counsel or representative, unless all parties receive notice and have an opportunity to participate.

Exception

(8) However, the board may seek legal advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to the parties so that they may make submissions as to the law.

Adjournment for view

(9) If it appears to be in the interests of justice, the board may direct that the board, the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Release of exhibits

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

Stay

(11) If the police officer is charged with an offence under a law of Canada or of a province or territory in connection with the misconduct or possible misconduct to which the complaint relates, the hearing shall continue unless the Crown Attorney advises the presiding officer that it should be stayed until the conclusion of the court proceedings.

Only members at hearing to participate in decision

(12) No member of the board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument; except with the parties' consent, no decision shall be given unless all the members so present participate in it.

Decision

(13) The decision of a majority of the members of the board is the board's decision.

Penalties

97.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may make submissions as to penalty and the board of inquiry may,

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

(f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

Calculation

(2) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day.

Idem

(3) Instead of or in addition to a penalty described in subsection (1), the board may reprimand the police officer.

Notice of decision

(4) The board shall promptly give written notice of the decision, with reasons, to the parties and the Attorney General.

Appeal to Divisional Court

98.—(1) A party to a hearing before a board of inquiry may appeal to the Divisional Court within thirty days of receiving notice of the board's decision.

Grounds for appeal

(2) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Attorney General

(3) The Attorney General is entitled to be heard, by counsel or otherwise, on the argument of the appeal.

POLICE COMPLAINTS COMMISSIONER

Appointment of Commissioner

99.—(1) The Lieutenant Governor in Council shall appoint a Police Complaints Commissioner, to hold office for a term not exceeding five years.

Reappointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding five years in each case.

Staff

R.S.O. 1980, c. 418

(3) Such employees as are considered necessary for the purposes of this Part may be appointed under the *Public Service Act*.

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received under this Part.

Monitoring handling of complaints

(6) The Commissioner shall monitor the handling of complaints by bureaus and chiefs of police.

Local offices

(7) The Commissioner may establish local offices.

(8) Anything that is given to or served upon the Commissioner under this Part may be given or served at one of the local offices. Idem

(9) The Commissioner shall report annually to the Attorney General. Annual report

(10) The Commissioner's accounts shall be audited annually by the Provincial Auditor. Audit

100.—(1) For the purposes of an investigation under section 88 or 89 or a review under section 91, the Commissioner may, if he or she has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, enter a police station after informing the chief of police and examine there documents and things related to the complaint. Powers on investigation or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or review as if it were an inquiry under that Act. Powers on inquiry

R.S.O. 1980, c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review the Commissioner is authorized to make and the person has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment of person to make investigation or review

(4) The person shall be provided with a certificate of appointment containing his or her photograph, and while exercising any powers or performing any duties in respect of the investigation or review shall produce the certificate of appointment upon request. Identification

(5) The person shall report the results of the investigation or review to the Commissioner. Report

(6) No person shall obstruct the Commissioner or a person appointed under subsection (3) or withhold from the Commissioner or person or conceal or destroy any documents or things related to the investigation or review. Obstruction

(7) If a justice of the peace is satisfied, on an application made without notice by the Commissioner or a person appointed under subsection (3), that there are reasonable grounds to believe that there are in any place documents or things relating to an investigation or review, the justice of the peace may make an order authorizing the applicant, together with such persons as he or she calls on for assistance, to enter Search warrant

the place, by force if necessary, search for the documents or things and examine them.

Entry and search at night restricted

(8) The entry and search shall not be made between the hours of 9 p.m. and 6 a.m. unless the order so authorizes.

Removal of books, etc.

(9) The Commissioner may, upon giving a receipt, remove any documents or things examined under subsection (1) or (7) relating to the investigation or review, shall cause them to be copied with reasonable dispatch and shall then return them promptly to the person from whom they were removed.

Admissibility of copies

(10) A copy made as provided in subsection (9) and certified to be a true copy by the Commissioner is admissible in evidence in any proceeding and is proof, in the absence of evidence to the contrary, of the original document and its contents.

Appointment of expert

(11) The Commissioner may appoint an expert to examine documents or things examined under subsection (1) or (7).

Recommendations concerning police practices or procedures

101.—(1) The Commissioner may make recommendations with respect to the practices or procedures of a police force by sending the recommendations, with any supporting documents, to,

(a) the Attorney General;

(b) the Solicitor General;

(c) the chief of police;

(d) the association, if any; and

(e) the police services board, in the case of a municipal police force.

Comments

(2) Within ninety days of receiving the recommendations, the chief of police, association and police services board shall send their comments to the Attorney General, the Solicitor General and the Commissioner.

Judicial review of Commissioner's decisions

102. The Commissioner's decisions under subsection 83 (5) (complaint to continue to be dealt with despite informal resolution), subsection 84 (6) (complaint to continue to be dealt with despite withdrawal) and clause 88 (1) (c) (decision to conduct investigation because of undue delay) shall be deemed to be made in the exercise of a statutory power of decision.

BOARDS OF INQUIRY

Panel for boards of inquiry

103.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry to conduct hearings in connection with complaints.

Recommendations for appointment

(2) One-third of the members of the panel shall be members of the Law Society of Upper Canada who are recommended for appointment by the Attorney General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Police Association of Ontario.

Idem

(4) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Association of Municipalities of Ontario.

Failure to make recommendations

(5) The Attorney General may make the recommendations under subsection (3) or (4) if the Police Association of Ontario or the Association of Municipalities of Ontario, as the case may be, do not submit written recommendations to the Attorney General within the time that he or she specifies.

Term

(6) Appointments to the panel shall be for a term not exceeding three years and a member may be reappointed for a further term or terms.

Continuance in office for uncompleted assignments

(7) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board to which he or she was assigned before the expiration of the term.

Remuneration

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Chair

(9) The Lieutenant Governor in Council shall appoint a person to be the chair of the panel.

Annual summary of decisions

(10) The chair shall cause to be prepared and published an annual summary of the decisions of boards, with reasons.

GENERAL MATTERS

Police officer's employment record

104. No reference to a complaint, a hearing held under this Part or a disciplinary hearing conducted under section 60 as a result of the complaint shall be made in the police offi-

cer's employment record, and the matter shall not be taken into account for any purpose related to his or her employment, unless,

(a) the police officer is convicted of an offence in connection with the incident;

(b) misconduct is proved on clear and convincing evidence at a hearing held under this Part or at a disciplinary hearing;

(c) the chief of police admonishes the police officer in connection with the incident, in accordance with subsection 59 (1);

(d) the police officer admits misconduct in the course of attempts to resolve the complaint informally; or

(e) the police officer resigns before the complaint is finally disposed of.

Resignation after hearing ordered

105.—(1) This section applies to a police officer who resigns from the police force after a hearing is ordered under section 90 or 91.

Idem

(2) If the police officer resigns before a board of inquiry is constituted under section 93, the following rules apply:

1. No board of inquiry shall be constituted unless the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force.

2. In that case, the board acquires jurisdiction over the police officer despite the earlier resignation.

Idem

(3) If the police officer resigns after a board of inquiry is constituted, the following rules apply:

1. The board of inquiry loses jurisdiction over the police officer.

2. If the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force, the board's jurisdiction is revived.

Notice

106.—(1) A notice or other document required to be given or sent under this Part is sufficiently given if delivered

personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Delegation by chief of police

107.—(1) The chief of police may authorize any police officer of the rank of inspector or higher (from another police force if there is none in the chief's own police force) to exercise any power or perform any duty of the chief of police referred to in this Part.

Delegation by Commissioner

(2) The Commissioner may authorize any member of his or her staff to exercise any power or perform any duty of the Commissioner referred to in this Part.

Application of section

108.—(1) This section applies to every person engaged in the administration of this Part, including a member of a police force.

Confidentiality, exceptions

1987, c. 25

(2) A person shall preserve secrecy in respect of all information obtained in the course of his or her duties and not contained in a record as defined in the *Freedom of Information and Protection of Privacy Act, 1987,* and shall not communicate such information to any other person except,

(a) in accordance with subsection (3);

(b) as may be required for law enforcement purposes; or

(c) with the consent of the person, if any, to whom the information relates.

Permitted disclosure

(3) A person may communicate information obtained in the course of his or her duties,

(a) as may be required in connection with the administration of this Act and the regulations; or

(b) to his or her counsel.

Non-compellability

(4) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Inadmissibility of documents

(5) No document prepared under this Part as the result of a complaint and no statement referred to in subsection 96 (6) (statements made during attempt at informal resolution) is admissible in a civil proceeding, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Non-application of R.S.O. 1980, c. 325

109. The *Ombudsman Act* does not apply to anything done under this Part.

Agreement for contributions

110. The Attorney General may, with the approval of the Lieutenant Governor in Council, enter into an agreement with a municipality providing for its payment to the Treasurer of Ontario, on such conditions as may be agreed upon, of contributions in respect of the amounts required for the purposes of this Part.

Offence

111. A person who contravenes subsection 96 (4) (photography at hearing), 100 (6) (obstructing Commissioner) or 108 (2) (confidentiality) is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Definition

1984, c. 63

112.—(1) In subsection (2), "former Act" means the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Transition, complaints under former Act

(2) Despite the repeal of the former Act by subsection 148 (1), complaints made under the former Act before the day this Act comes into force shall be dealt with in accordance with the former Act, except that hearings before boards of inquiry that are constituted after the day this Act comes into force shall be conducted in accordance with this Part.

PART VII

Special Investigations

Special investigations unit

113.—(1) There shall be a special investigations unit of the Ministry of the Solicitor General.

Composition

(2) The unit shall consist of a director appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General and investigators appointed under the *Public Service Act*.

R.S.O. 1980, c. 418

Idem

(3) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators.

Peace officers

(4) The director and investigators are peace officers.

Investigations

(5) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers.

Restriction

(6) An investigator shall not participate in an investigation that relates to members of a police force of which he or she was a member.

Charges

(7) If there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution.

Report

(8) The director shall report the results of investigations to the Attorney General.

Co-operation of police forces

(9) Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations.

PART VIII

LABOUR RELATIONS

Definitions

114. In this Part,

"Arbitration Commission" means the Ontario Police Arbitration Commission continued by subsection 131 (1);

"senior officer" means a member of a police force who has the rank of inspector or higher or is employed in a supervisory or confidential capacity.

Exclusion of O.P.P.

115.—(1) This Part, except section 117, does not apply to the Ontario Provincial Police.

Exclusion of chief of police and deputy

(2) The working conditions and remuneration of the chief of police and deputy chief of police of a police force shall be determined under clause 31 (1) (d) (responsibilities of board) and not under this Part.

Hearing re person's status

116.—(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.

Decision final

(2) The Commission's decision is final.

Membership in trade union prohibited, exception

117. A member of a police force shall not become or remain a member of a trade union or of an organization that is affiliated directly or indirectly with a trade union, unless the membership is required for secondary activities that do not contravene section 49 and the chief of police consents.

Categories

118.—(1) If a majority of the members of a police force, or an association that is entitled to give notices of desire to bargain, assigns the members of the police force to different categories for the purposes of this Part, bargaining, conciliation and arbitration shall be carried on as if each category were a separate police force.

Senior officers

(2) If at least 50 per cent of the senior officers of a police force belong to an association composed only of senior officers, bargaining, conciliation and arbitration shall be carried on as if the senior officers were a separate police force.

Restriction

(3) Bargaining, conciliation and arbitration may be carried on with more than two categories within a police force (apart from senior officers) only if the Commission has approved the creation of the categories.

Notice of desire to bargain

119.—(1) If no agreement exists or at any time after ninety days before an agreement would expire but for subsection 129 (1) or (2), a majority of the members of a police force may give the board notice in writing of their desire to bargain with a view to making an agreement, renewing the existing agreement, with or without modifications, or making a new agreement.

Bargaining

(2) Within fifteen days after the notice of desire to bargain is given or within the longer period that the parties agree upon, the board shall meet with a bargaining committee of the members of the police force.

Idem

(3) The parties shall bargain in good faith and make every reasonable effort to come to an agreement dealing with the remuneration, pensions, sick leave credit gratuities and grievance procedures of the members of the police force and, subject to section 126, their working conditions.

Filing of agreement

(4) The board shall promptly file a copy of any agreement with the Arbitration Commission.

Association

(5) If at least 50 per cent of the members of the police force belong to an association, it shall give the notice of desire to bargain.

Pension plans under R.S.O.1980, c. 302

(6) If the notice of desire to bargain involves pensions under a pension plan established or to be established under the *Municipal Act*, it shall also be given to the Minister of Municipal Affairs, who may determine the maximum pension benefits that may be included in any agreement or award with respect to the pension plan.

Bargaining committee

120.—(1) The members of the bargaining committee shall be members of the police force.

Counsel and advisors

(2) One legal counsel and one other advisor for each of the bargaining committee and the board may participate in the bargaining sessions.

Police organization

(3) If the notice of desire to bargain is given by an association that is affiliated with a police organization, or if at least 50 per cent of the members of the police force belong to a police organization, a member of the organization may attend the parties' bargaining sessions in an advisory capacity.

Chief of police

(4) The chief of police or, if the parties consent, another person designated by the chief of police may also attend the parties' bargaining sessions in an advisory capacity.

Appointment of conciliation officer

121.—(1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a notice of desire to bargain has been given.

Duty of conciliation officer

(2) The conciliation officer shall confer with the parties and endeavour to effect an agreement and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(3) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that an agreement may be made within a reasonable time if the period is extended.

Report

(4) When the conciliation officer reports to the Solicitor General that an agreement has been reached or that an agreement cannot be reached, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(5) Neither party shall give a notice requiring matters in dispute to be referred for arbitration under section 122 until the Solicitor General has informed the parties of the conciliation officer's report or informed them that he or she does not consider the case appropriate for the appointment of a conciliation officer.

Arbitration

122.—(1) If matters remain in dispute after bargaining under section 119 and conciliation, if any, under section 121, a party may give the Solicitor General and the other party a written notice referring the matters to arbitration.

Composition of arbitration board

(2) The following rules apply to the composition of the arbitration board:

1. The parties shall determine whether it shall consist of one person or of three persons. If they are unable to agree on this matter, or if they agree that the arbitration board shall consist of three persons but one of the parties then fails to appoint a person in accordance with the agreement, the arbitration board shall consist of one person.

2. If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the Solicitor General.

3. If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the Solicitor General.

Time for arbitration

(3) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver its decision or award within sixty days after commencing the arbitration.

Representations by council

(4) The municipal council may make representations before the arbitration board if it is authorized to do so by a resolution.

Criteria

(5) In making an award, the arbitration board shall take into account the interest and welfare of the community served by the police force as well as any local factors affecting the community.

Filing of award

(6) The arbitration board shall promptly file a copy of its decision or award with the Arbitration Commission.

Costs and expenses

(7) The following rules apply with respect to the costs and expenses of the arbitration:

1. The Arbitration Commission shall pay the fees of any person the Solicitor General appoints to the arbitration board.

2. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

3. The parties shall share equally the costs and expenses for matters shared in common, including the fees of any person whom they jointly appoint to the arbitration board.

Dispute, appointment of conciliation officer

123.—(1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a difference arises between the parties concerning an agreement or an arbitrator's decision or award made under this Part, or if it is alleged that an agreement or award has been violated.

Duty of conciliation officer

(2) The conciliation officer shall confer with the parties and endeavour to resolve the dispute and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(3) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that the dispute may be resolved within a reasonable time if the period is extended.

Report

(4) When the conciliation officer reports to the Solicitor General that the dispute has been resolved or that it cannot be resolved by conciliation, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(5) Neither party shall give a notice referring the dispute for arbitration until the Solicitor General has informed the parties of the conciliation officer's report.

Arbitration after conciliation fails

124.—(1) If the conciliation officer reports that the dispute cannot be resolved by conciliation, either party may give the Solicitor General and the other party a written notice referring the dispute to arbitration.

Idem

(2) The procedure provided by subsection (1) is available in addition to any grievance or arbitration procedure provided by the agreement, decision or award.

Composition of arbitration board

(3) The following rules apply to the composition of the arbitration board:

1. The parties shall determine whether it shall consist of one person or of three persons. If they are unable to agree on this matter, or if they agree that the arbitration board shall consist of three persons but one of the parties then fails to appoint a person in accordance with the agreement, the arbitration board shall consist of one person.

2. If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the Solicitor General.

3. If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the Solicitor General.

Time for arbitration

(4) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver a decision within a reasonable time.

Filing of decision

(5) The arbitration board shall promptly file a copy of its decision with the Arbitration Commission.

Costs and expenses

(6) The following rules apply with respect to the costs and expenses of the arbitration:

1. The Arbitration Commission shall pay the fees of any person the Solicitor General appoints to the arbitration board.

2. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

3. The parties shall share equally the costs and expenses for matters shared in common, including the fees of any person whom they jointly appoint to the arbitration board.

Enforcement

(7) After the day that is thirty days after the delivery of the decision or after the day that the decision provides for compliance, whichever is later, the arbitration board may, of its own motion, and shall, at a party's request, file a copy of the deci-

sion, in the prescribed form, in the office of the Registrar of the Supreme Court.

(8) The decision shall be entered in the same way as a judgment of the Supreme Court and may be enforced as such. Idem

125. The parties may agree to extend any period of time mentioned in this Part. Extension of time

126. Agreements and awards made under this Part do not affect the working conditions of the members of the police force in so far as those working conditions are determined by sections 42 to 49, subsection 50 (3) and Parts V, VI and VII of this Act and by the regulations. Restriction

127. The *Arbitrations Act* does not apply to arbitrations conducted under this Part. Non-application of R.S.O. 1980, c. 25

128. Agreements, decisions and awards made under this Part bind the board and the members of the police force. Agreements, decisions and awards binding

129.—(1) Agreements, decisions and awards remain in effect until the end of the year in which they come into effect and thereafter continue in effect until replaced. Duration of agreements, decisions and awards

(2) The parties to an agreement may provide that the agreement and any decisions or awards made with respect to it shall remain in effect until the end of the year following the year in which they come into effect and thereafter shall continue in effect until replaced. Longer duration if parties agree

130.—(1) If, when the council is adopting its annual estimates, a notice of desire to bargain has been given but there is not yet an agreement, decision or award, the council shall make such provision for the payment of expenditures that will result from the expected agreement, decision or award as it considers adequate. Provision for expenditures

(2) An agreement, decision or award comes into effect on the first day of the fiscal period in respect of which the municipal council may make provision for it in its estimates, whether that day is before or after the agreement, decision or award is made. Coming into effect

(3) A provision of the agreement, decision or award that does not involve municipal expenditures may come into effect earlier than the day referred to in subsection (2). Exception

131.—(1) The commission known as the Ontario Police Arbitration Commission is continued. Arbitration Commission continued

Composition

(2) The Arbitration Commission shall be composed of the following members, appointed by the Lieutenant Governor in Council:

1. Two representatives of boards, recommended for appointment by the Municipal Police Authorities.

2. Two representatives of members of associations, recommended for appointment by the Police Association of Ontario.

3. A chair.

Terms of office

(3) The representatives of boards and members of associations shall hold office for two-year terms and may be reappointed; the chair shall hold office during pleasure.

Staff

R.S.O. 1980, c. 418

(4) Such employees as are necessary for the proper conduct of the Arbitration Commission's work may be appointed under the *Public Service Act*.

Responsibilities of Arbitration Commission

(5) The Arbitration Commission has the following responsibilities:

1. Maintaining a register of arbitrators who are available for appointment.

2. Assisting arbitrators by making administrative arrangements in connection with arbitrations.

3. Fixing the fees of arbitrators appointed by the Solicitor General under section 124.

4. Sponsoring the publication and distribution of information about agreements, arbitrations and awards.

5. Sponsoring research on the subject of agreements, arbitrations and awards.

6. Maintaining a file of agreements, decisions and awards made under this Part.

Regulations

(6) Subject to the approval of the Lieutenant Governor in Council, the Arbitration Commission may make regulations,

(a) governing the conduct of arbitrations and prescribing procedures for them;

(b) prescribing forms and providing for their use.

(7) The persons who are members of the Arbitration Commission on the day this Act comes into force shall continue to hold office until their terms expire, and may be reappointed in accordance with subsection (2). Transition

PART IX

REGULATIONS AND MISCELLANEOUS

132.—(1) This section applies to personal property of all kinds, except firearms and money, that comes into the possession of a police force under either of the following circumstances: Property in possession of police force

1. The property was stolen from its owner or was found abandoned in a public place, and the chief of police is unable to determine who owns it.

2. The property was seized by a member of the police force in the lawful execution of his or her duties, all legal proceedings in respect of the property have been completed, there is no court order for its disposition and there is no legal requirement, apart from this section, that it be retained or disposed of.

(2) The chief of police may cause the property to be sold, and the board may use the proceeds for any purpose that it considers in the public interest. Sale

(3) If the property is perishable, it may be sold at any time without notice. Perishable property

(4) If the property is not perishable, the following rules apply to its sale: Non-perishable property

1. The property may be sold when it has been in the possession of the police force for at least one month, in the case of a motor vehicle as defined in the *Highway Traffic Act* or a bicycle, or for at least three months, in the case of other property. R.S.O. 1980, c. 198

2. The sale shall be by public auction.

3. At least ten days notice of the time and place of the public auction shall be given by publication in a newspaper of general circulation in the municipality.

4. The sale may be adjourned, repeatedly if necessary, until the property is sold.

Claim of owner of property

(5) If a motor vehicle, bicycle or other property has been sold before it has been in the possession of the police force for three months and if the owner makes a claim before that time, the owner is entitled to receive the proceeds, less the costs of storage, advertising and sale.

Register of property

(6) The chief of police shall ensure that the police force keeps a register of property and that the following rules are followed:

1. The description and location of every item of property shall be recorded.

2. If the property is sold, full particulars shall be recorded.

3. If the property is returned to its owner, his or her name, address and telephone number shall be recorded.

Exception

R.S.O. 1980, c. 198

(7) This section does not apply to a motor vehicle that is impounded under section 192 of the *Highway Traffic Act*.

Money

133.—(1) This section applies to money that comes into the possession of a police force under the circumstances described in paragraph 1 or 2 of subsection 132 (1).

Accounting

(2) The money shall be accounted for according to the prescribed method.

Use of money

(3) If three months have elapsed after the day the money came into the possession of the police force and the owner has not claimed it, the board may use it for any purpose that it considers in the public interest.

Firearms

134.—(1) This section applies to firearms that are in the possession of a police force because they have been found, turned in or seized.

Safe-keeping, return to owner

(2) The chief of police shall ensure that firearms are securely stored, and that they are returned to their owners if there is a court order or other legal requirement to that effect.

Destruction

(3) If all possible court proceedings relating to a firearm have been completed or the time for them has expired and there is no court order or other legal requirement governing how the firearm is to be dealt with, the chief of police shall ensure that it is destroyed promptly, unless subsection (4) applies.

Firearm of special interest

(4) If the chief of police considers the firearm unique, an antique, or of educational or historical value, he or she shall notify the Director of the Centre of Forensic Sciences.

Idem

(5) If the Director indicates, within three months of receiving notice, that the firearm is required for the Centre's collection, the chief of police shall ensure that it is transferred there.

Idem

(6) If the Director indicates that the firearm is not required for the Centre's collection or fails to respond within three months of receiving notice, the chief of police shall ensure that the firearm is destroyed promptly.

Disposal otherwise than by destruction

(7) The chief of police may dispose of a firearm to which subsection (6) applies otherwise than by having it destroyed if he or she first obtains the Solicitor General's approval of the method of disposal.

Register of firearms

(8) The chief of police shall ensure that the police force keeps a register of firearms and that the following rules are followed:

1. Every firearm's description and location shall be recorded.

2. When a firearm ceases to be in the possession of the board or of a member of the police force, full particulars shall be recorded, including the name of the person who disposed of it and the date and method of disposal.

3. If the firearm is returned to its owner, his or her name, address and telephone number shall also be recorded.

4. On or before the 31st day of January in each year, a statement shall be filed with the Commission listing the firearms that have come into the possession of the police force during the preceding calendar year, indicating which firearms are still being retained and which have been disposed of, and giving the particulars of disposition.

Regulations

135.—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing standards for police services;

2. prescribing procedures for the inspection and review by the Solicitor General of police forces;

3. requiring municipalities to provide police detention facilities, governing those facilities and providing for their inspection;

4. providing for financial aid to police training schools;

5. prescribing the minimum amount of remuneration to be paid by municipalities to the members of boards who are appointed by the Lieutenant Governor in Council or Solicitor General;

6. prescribing the procedures to be followed by boards and the places at which their meetings shall be held;

7. prescribing the forms of oaths or affirmations of office and secrecy for the purposes of section 32 (members of boards), section 45 (police officers), subsection 52 (6) (auxiliary members of police forces), subsection 53 (9) (special constables) and subsection 54 (8) (First Nations Constables);

8. respecting the government, operation and administration of police forces;

9. governing the qualifications for the appointment of persons to police forces and for their promotion;

10. prescribing groups of persons for the purposes of subsection 48 (1) (employment equity plans);

11. prescribing matters to be contained in employment equity plans;

12. respecting the political activities in which municipal police officers are permitted to engage;

13. establishing the ranks that shall be held by members of municipal police forces;

14. prescribing the minimum salary or other remuneration and allowances to be paid to members of municipal police forces;

15. regulating or prohibiting the use of any equipment by a police force or any of its members;

16. regulating the use of force by members of police forces;

17. prescribing standards of dress for police officers on duty and prescribing requirements respecting police uniforms;

18. prescribing courses of training for members of police forces and prescribing standards in that connection;

19. governing the conduct, duties, suspension and dismissal of members of police forces;

20. describing the circumstances under which members of police forces are permitted and not permitted to pursue persons by means of motor vehicles, and prescribing procedures that shall be followed when a person is pursued in that manner;

21. prescribing the records, returns, books and accounts to be kept by police forces and their members;

22. prescribing the method of accounting for fees and costs that come into the hands of members of police forces;

23. prescribing a code of conduct in which offences constituting misconduct are described for the purposes of section 56;

24. providing for the payment of fees and expenses to witnesses at hearings conducted under Part V or VI;

25. prescribing procedures for the investigation of complaints under Part VI;

26. assigning further duties to the Police Complaints Commissioner;

27. prescribing the method of accounting for money to which section 133 applies;

28. prescribing forms and providing for their use;

29. prescribing any matter that this Act requires to be prescribed or refers to as being prescribed;

30. respecting any matter that is necessary or advisable to implement this Act effectively.

Idem

(2) A regulation made under subsection (1) may be general or particular in its application.

Crown bound

136. This Act binds the Crown in right of Ontario.

PART X

CONSEQUENTIAL AMENDMENTS AND REPEALS

137. Section 66 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Non-application of 1990, c. 10

66.—(1) The *Police Services Act, 1990*, being chapter 10, except section 15 (municipal by-law enforcement officers), does not apply to the District Corporation or to an area municipality.

Non-application of R.S.O. 1980, c. 302, ss. 202, 203

(2) Sections 202 and 203 of the *Municipal Act* do not apply to an area municipality.

138.—(1) Section 174 of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

174. In this Part, "Metropolitan Board" means The Municipality of Metropolitan Toronto Police Services Board.

(2) Subsections 175 (1) and (2) of the said Act are repealed.

(3) Subsection 177 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10 and amended by 1988, chapter 12, section 1, is repealed and the following substituted therefor:

Composition of Metropolitan Board 1990, c. 10

(1) The Metropolitan Council shall be deemed to have applied to the Lieutenant Governor in Council for an increase in the size of its board under subsection 27 (9) of the *Police Services Act, 1990* and the Lieutenant Governor in Council shall be deemed to have approved the application.

(4) Section 178 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10, is repealed.

139.—(1) Section 73 of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

73. In this Part, "Durham Police Board" means The Regional Municipality of Durham Police Services Board. Definition

(2) Section 74 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 1, is repealed.

(3) Subsection 75 (1) of the said Act is repealed and the following substituted therefor:

(1) The Durham Police Board and the members of the Durham Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

140.—(1) Section 68 of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

68. In this Part, "Haldimand-Norfolk Police Board" means The Regional Municipality of Haldimand-Norfolk Police Services Board. Definition

(2) Section 69 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 2, is repealed.

(3) Subsections 70 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

(1) The Haldimand-Norfolk Police Board and the members of the Haldimand-Norfolk Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

(2) Despite subsection 31 (1) of the *Police Services Act, 1990*, the Haldimand-Norfolk Police Board is responsible for providing police services only for those portions of the Regional Area in which a local municipality maintained a police force on the 31st day of March, 1974. Jurisdiction 1990, c. 10

(3) With the Solicitor General's approval, the Haldimand-Norfolk Police Board may assume responsibility for providing police services for additional portions of the Regional Area. Idem

141.—(1) Section 79 of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

79. In this Part, "Halton Police Board" means The Regional Municipality of Halton Police Services Board.

(2) Section 80 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 3, is repealed.

(3) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Halton Police Board and the members of the Halton Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

142.—(1) Section 90 of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

90. In this Part, "Hamilton-Wentworth Police Board" means The Regional Municipality of Hamilton-Wentworth Police Services Board.

(2) Section 91 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 4, is repealed.

(3) Subsection 92 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Hamilton-Wentworth Police Board and the members of the Hamilton-Wentworth Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

143.—(1) Section 116 of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

116. In this Part, "Niagara Police Board" means The Regional Municipality of Niagara Police Services Board.

(2) Section 117 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 5, is repealed.

(3) Subsection 118 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Niagara Police Board and the members of the Niagara Regional Police Force have the same duties with

respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

144.—(1) Section 74 of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

74. In this Part, "Peel Police Board" means The Regional Municipality of Peel Police Services Board. Definition

(2) Section 75 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 6, is repealed.

(3) Subsection 76 (1) of the said Act is repealed and the following substituted therefor:

(1) The Peel Police Board and the members of the Peel Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

145.—(1) Section 38 of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

38. In this Part, "Sudbury Police Board" means The Regional Municipality of Sudbury Police Services Board. Definition

(2) Section 39 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 57, section 7, is repealed.

(3) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

(1) The Sudbury Police Board and the members of the Sudbury Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

146.—(1) Section 109 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

109. In this Part, "Waterloo Police Board" means The Regional Municipality of Waterloo Police Services Board. Definition

(2) Section 110 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 8, is repealed.

(3) Subsection 111 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Waterloo Police Board and the members of the Waterloo Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

147.—(1) Section 111 of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

111. In this Part, "York Police Board" means The Regional Municipality of York Police Services Board.

(2) Section 112 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 9, is repealed.

(3) Subsection 113 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The York Police Board and the members of the York Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

148.—(1) The following are repealed:

1. **The *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, except section 57a, as enacted by the Statutes of Ontario, 1989, chapter 24, section 1.**

2. **The *Police Amendment Act, 1981*, being chapter 55.**

3. **The *Police Amendment Act, 1983*, being chapter 57.**

4. **Section 201 of the *Courts of Justice Act, 1984*, being chapter 11.**

5. **Section 53 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.**

6. **The *Metropolitan Toronto Police Force Complaints Act, 1984*, being chapter 63.**

7. **The *Metropolitan Toronto Police Force Complaints Amendment Act, 1986*, being chapter 31.**

(2) The title of the *Police Act* is repealed and the following substituted therefor:

COURT SECURITY ACT

(3) Section 57a of the *Court Security Act* is amended by striking out "or council" in the first line.

149. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

150. The short title of this Act is the *Police Services Act, 1990*. Short title

Gover
Public

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 107

(Chapter 10
Statutes of Ontario, 1990)

An Act to revise the Police Act and amend the law relating to Police Services

The Hon. S. Offer
Solicitor General



1st Reading	December 20th, 1989
2nd Reading	May 17th, 1990
3rd Reading	June 28th, 1990
Royal Assent	June 28th, 1990

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Bill 107 1989

An Act to revise the Police Act and amend the law relating to Police Services

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Police services shall be provided throughout Ontario in accordance with the following principles: Declaration of principles

1. The need to ensure the safety and security of all persons and property in Ontario.

2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code, 1981*. 1981, c. 53

3. The need for co-operation between the providers of police services and the communities they serve.

4. The importance of respect for victims of crime and understanding of their needs.

5. The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society.

6. The need to ensure that police forces are representative of the communities they serve.

Definitions

2. In this Act,

"association" means an association whose members belong to one police force and whose objects include the improvement of their working conditions and remuneration;

"board" means, except in Part VI, a municipal police services board;

"chief of police" means a municipal chief of police or the Commissioner of the Ontario Provincial Police and includes an acting chief of police;

"Commission" means the Ontario Civilian Commission on Police Services;

"Commissioner" means, except in Part VI, the Commissioner of the Ontario Provincial Police;

"member of a police force" means a police officer, and in the case of a municipal police force includes an employee who is not a police officer;

"municipality" includes district, metropolitan and regional municipalities and the County of Oxford;

"police force" means the Ontario Provincial Police or a municipal police force;

"police officer" means a chief of police or any other police officer, but does not include a special constable, a First Nations Constable, a by-law enforcement officer or an auxiliary member of a police force;

"prescribed" means prescribed by the regulations;

"regulations" means the regulations made under this Act.

PART I

RESPONSIBILITY FOR POLICE SERVICES

SOLICITOR GENERAL

Administration of Act

3.—(1) This Act, except Part VI, shall be administered by the Solicitor General.

Duties and powers of Solicitor General

(2) The Solicitor General shall,

(a) monitor police forces to ensure that adequate and effective police services are provided at the municipal and provincial levels;

(b) monitor boards and police forces to ensure that they comply with prescribed standards of service;

(c) monitor the establishment and implementation of employment equity plans;

(d) develop and promote programs to enhance professional police practices, standards and training;

(e) conduct a system of inspection and review of police forces across Ontario;

(f) assist in the co-ordination of police services;

(g) consult with and advise boards, municipal chiefs of police, employers of special constables and associations on matters relating to police and police services;

(h) develop, maintain and manage programs and statistical records and conduct research studies in respect of police services and related matters;

(i) provide to boards and municipal chiefs of police information and advice respecting the management and operation of police forces, techniques in handling special problems and other information calculated to assist;

(j) issue directives and guidelines respecting policy matters;

(k) develop and promote programs for community-oriented police services;

(l) operate the Ontario Police College.

Ontario Police College continued

(3) The police college known as the Ontario Police College for the training of members of police forces is continued.

MUNICIPALITIES

Police services in municipalities

4.—(1) Every municipality to which this subsection applies shall provide adequate and effective police services in accordance with its needs.

Application of subsection (1)

(2) Subsection (1) applies to,

(a) cities, towns, villages and townships (other than area municipalities within regional or metropolitan municipalities); and

(b) regional and metropolitan municipalities.

Exception, Muskoka

(3) Subsection (1) does not apply to The District Municipality of Muskoka or to its area municipalities.

Exception, Ottawa-Carleton

(4) Subsection (1) does not apply to The Regional Municipality of Ottawa-Carleton but does apply to its area municipalities.

Exception, Oxford County

(5) Subsection (1) does not apply to the County of Oxford but does apply to its area municipalities.

Exemption of towns of less than 5,000

R.S.O. 1980, c. 31

(6) The Lieutenant Governor in Council may, on the Solicitor General's recommendation, exempt any town having a population of less than 5,000 according to the last enumeration taken under section 14 of the *Assessment Act* from the application of subsection (1), and the exemption continues in effect until it is revoked.

Restriction, villages and townships

(7) Subsection (1) applies to a village or township only if it has been so designated by the Lieutenant Governor in Council on the Solicitor General's recommendation; the designation may relate to all or part of the village or township.

Methods of establishing municipal police forces

5. A municipality's responsibility for providing police services shall be discharged in one of the following ways:

1. The board may appoint the members of a police force under clause 31 (1) (a), in which case the municipal council shall pay the cost of the police force.

2. The board may enter into an agreement under section 7 (sharing police services).

3. The council may enter into an agreement under section 10 (agreements for provision of police services by O.P.P.).

4. With the Commission's approval, the municipality may adopt a different method of providing police services.

Amalgamation of police forces

6.—(1) Despite any other Act, two or more municipalities that have police forces may enter into an agreement to amalgamate them.

Contents of amalgamation agreement

(2) The agreement shall deal with,

(a) the establishment and composition of a board for the amalgamated police forces;

(b) the amalgamation of the police forces and the appointment or transfer of their members;

(c) the amalgamated board's use of the assets and its responsibility for the liabilities associated with the police forces;

(d) the budgeting of the cost for the operation of the amalgamated police force;

(e) any other matter that is necessary or advisable to effect the amalgamation.

Commission's approval

(3) The agreement does not take effect until the Commission has approved the organization of the amalgamated police force.

Exception, board appointments

(4) Appointments to a board for amalgamated police forces may be made before the agreement takes effect.

Municipal agreements for sharing police services

7. Two boards may agree that one board will provide police services to the other, on the conditions set out in the agreement.

Additional municipal police forces

8.—(1) A municipality to which subsection 4 (1) (obligation to provide police services) does not apply may, with the Commission's approval, establish and maintain a police force.

Transition

R.S.O. 1980, c. 381

(2) An approval given or deemed to have been given under section 19 of the *Police Act* in respect of a police force that

was being maintained on the day before this Act comes into force shall be deemed to have been given under this section.

Revocation

(3) The Commission may revoke an approval given or deemed to have been given under this section.

Failure to provide police services

9.—(1) If the Commission finds that a municipality to which subsection 4 (1) applies is not providing police services, it may request that the Commissioner have the Ontario Provincial Police give assistance.

Inadequate police services

(2) If the Commission finds that a municipal police force is not providing adequate and effective police services or is not complying with this Act or the regulations, it may communicate that finding to the board of the municipality and direct the board to take the measures that the Commission considers necessary.

Idem

(3) If the board does not comply with the direction, the Commission may request that the Commissioner have the Ontario Provincial Police give assistance.

Crown Attorney's request

(4) In any area for which a municipality is required to provide police services, the Crown Attorney may request that the Commissioner have the Ontario Provincial Police give assistance.

Board's request

(5) A board may, by resolution, request that the Commissioner have the Ontario Provincial Police give assistance.

Request of chief of police in emergency

(6) A municipal chief of police who is of the opinion that an emergency exists in the municipality may request that the Commissioner have the Ontario Provincial Police give assistance.

Chief of police to advise board

(7) A chief of police who makes a request under subsection (6) shall advise the chair of the board of the fact as soon as possible.

Assistance of O.P.P.

(8) When a request is made under this section, the Commissioner shall have the Ontario Provincial Police give such assistance as he or she considers necessary.

Cost of services

(9) The Commissioner shall certify the cost of the services provided under this section by the Ontario Provincial Police and, unless the Solicitor General directs otherwise, the municipality shall pay that amount to the Treasurer of Ontario.

Idem

(10) The amount may be deducted from any grant payable to the municipality out of provincial funds or may be

recovered by a court action, with costs, as a debt due to Her Majesty.

Municipal agreements for provision of police services by O.P.P.

10.—(1) The Solicitor General may enter into an agreement with the council of a municipality for the provision of police services for the municipality by the Ontario Provincial Police.

Board's consent

(2) The agreement requires the board's consent.

Collective bargaining

(3) No agreement shall be entered into under this section if, in the Solicitor General's opinion, the council seeks the agreement for the purpose of defeating the collective bargaining provisions of this Act.

Duties of O.P.P.

(4) When the agreement comes into effect, the members of the Ontario Provincial Police assigned to the municipality shall provide police services, including by-law enforcement, for the municipality, and shall perform any other duties that are specified in the agreement.

Payment into Consolidated Revenue Fund

(5) The amounts received from the municipality under the agreement shall be paid into the Consolidated Revenue Fund.

Role of board

(6) If the municipality has an agreement under this section, section 31 (responsibilities of board), section 38 (municipal police force) and clause 39 (3) (a) (estimates respecting police force) do not apply; however, the board shall advise the Solicitor General and the senior officer of the Ontario Provincial Police in the municipality with respect to police services in the municipality, and may generally determine priorities in the municipality with respect to police services, in accordance with the agreement and with provincial policies affecting the Ontario Provincial Police.

Fines

11.—(1) This section applies if a municipality is entitled to receive fines paid as a result of prosecutions instituted by police officers of the municipal police force.

Idem

(2) If the municipality does not have its own police force because of an agreement under section 7 or 10, the police officers who are assigne to the municipality under the agreement shall, for the purposes of determining entitlement to fines, be deemed to be police officers of the municipal police force.

Rates for cost of police services

12.—(1) With the Commission's approval, the costs incurred by a municipality in providing police services may be paid by levying different rates for different areas defined by the municipal council or by levying rates in some but not all areas.

Exemption for farm lands and buildings

(2) With the Commission's approval, the municipal council may grant a total or partial exemption from a rate or rates levied under subsection (1) to lands and buildings used exclusively for farming purposes.

Special areas

13.—(1) If, because of the establishment of a business or for any other reason, special circumstances or abnormal conditions in an area make it inequitable, in the Solicitor General's opinion, to impose the responsibility for police services on a municipality or on the Province, the Lieutenant Governor in Council may designate the area as a special area.

Agreement for provision of police services by O.P.P.

(2) The person who operates the business or owns the special area shall enter into an agreement with the Solicitor General for the provision of police services by the Ontario Provincial Police for the special area.

Duties of O.P.P., payment

(3) Subsections 10 (4) and (5) apply to the agreement with necessary modifications.

Failure to enter into agreement

(4) If the person who operates the business or owns the special area does not enter into an agreement as subsection (2) requires, the Ontario Provincial Police shall provide police services for the area.

Cost of services

(5) The costs of the services may be recovered from the person by a court action, with costs, as a debt due to Her Majesty.

Police services outside municipality

14. A municipality that has an interest in land outside the territory of the municipality may agree to pay all or part of the cost of providing police services for the land.

Municipal by-law enforcement officers

15.—(1) A municipal council may appoint persons to enforce the by-laws of the municipality.

Peace officers

(2) Municipal by-law enforcement officers are peace officers for the purpose of enforcing municipal by-laws.

Aid to survivors

16. A municipal council may grant financial or other assistance for the benefit of the surviving spouses and children of members of the municipal police force who die from injuries received or illnesses contracted in the discharge of their duties.

ONTARIO PROVINCIAL POLICE

Commissioner

17.—(1) There shall be a Commissioner of the Ontario Provincial Police who shall be appointed by the Lieutenant Governor in Council.

(2) Subject to the Solicitor General's direction, the Commissioner has the general control and administration of the Ontario Provincial Police and the employees connected with it. Functions

(3) The Commissioner shall prepare and implement an employment equity plan in accordance with section 48 and the regulations. Employment equity plans

(4) After the end of each calendar year, the Commissioner shall file with the Solicitor General an annual report on the affairs of the Ontario Provincial Police. Annual report

18.—(1) The Ontario Provincial Police shall consist of the Commissioner and other police officers appointed under the *Public Service Act*. Composition of O.P.P. R.S.O. 1980, c. 418

(2) The Commissioner shall establish the ranks within the Ontario Provincial Police and shall determine the rank of each police officer. Ranks

(3) The Lieutenant Governor in Council may name police officers of the Ontario Provincial Police to the rank of commissioned officers and may authorize the issue of commissions to them under the Great Seal. Commissioned officers

(4) The Commissioner may appoint such other employees as are required in connection with the Ontario Provincial Police. Employees

19.—(1) The Ontario Provincial Police have the following responsibilities: Responsibilities of O.P.P.

1. Providing police services in respect of the parts of Ontario that do not have municipal police forces other than by-law enforcement officers.

2. Providing police services in respect of all navigable bodies and courses of water in Ontario, except those that lie within municipalities designated by the Solicitor General.

3. Maintaining a traffic patrol on the King's Highway, except the parts designated by the Solicitor General.

4. Maintaining a traffic patrol on the connecting links within the meaning of section 21 of the *Public Transportation and Highway Improvement Act* that are designated by the Solicitor General. R.S.O. 1980, c. 421

5. Maintaining investigative services to assist municipal police forces on the Solicitor General's direction or at the Crown Attorney's request.

Municipal by-laws

(2) The Ontario Provincial Police have no responsibilities in connection with municipal by-laws, except under agreements made in accordance with section 10.

Aid to survivors

20. The Lieutenant Governor in Council may, out of money appropriated for that purpose by the Legislature, grant financial or other assistance for the benefit of the surviving spouses and children of members of the Ontario Provincial Police who die from injuries received or illnesses contracted in the discharge of their duties.

PART II

Ontario Civilian Commission on Police Services

Commission continued

21.—(1) The commission known as the Ontario Police Commission is continued under the name of "Ontario Civilian Commission on Police Services".

Composition

(2) The Commission shall consist of not fewer than three and not more than nine members who shall be appointed by the Lieutenant Governor in Council.

Chair

(3) The Lieutenant Governor in Council may designate one of the members of the Commission to be the chair.

Delegation

(4) The chair may authorize a member of the Commission to exercise the Commission's powers and perform its duties with respect to a particular matter, but the authority conferred on the Commission by sections 23 and 24 may not be delegated.

Quorum

(5) Two members of the Commission constitute a quorum.

Proceedings open to the public

(6) Meetings, hearings, investigations and inquiries conducted by the Commission shall be open to the public, subject to subsection (7), and notice of them shall be published in the manner that the Commission determines.

Exception

(7) The Commission may exclude the public from all or part of a meeting, hearing, investigation or inquiry if it is of the opinion that,

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public

interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

Admissibility of documents

(8) A document purporting to be issued by the Commission and signed by one of its members is admissible in evidence without proof of the signature or authority of the person signing.

Annual report

(9) After the end of each calendar year, the Commission shall file with the Solicitor General an annual report on its affairs.

Expenses

(10) The money required for the Commission's purposes shall be paid out of the amounts appropriated by the Legislature for that purpose.

Powers and duties of Commission

22.—(1) The Commission's powers and duties include,

(a) if the Solicitor General advises the Commission that a board or municipal police force is not complying with prescribed standards of police services,

(i) directing the board or police force to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (1);

(b) if the Solicitor General advises the Commission that a board or municipal chief of police is not complying with the requirements of this Act and the regulations respecting employment equity plans,

(i) directing the board or chief of police to comply, and

(ii) if the Commission considers it appropriate, taking measures in accordance with subsection 23 (2);

(c) conducting investigations with respect to municipal police matters under section 25;

(d) conducting inquiries into matters relating to crime and law enforcement under section 26;

(e) inquiring into any matter regarding the designation of a municipality under subsection 4 (7) (police services in villages and townships) and, after a hearing, making recommendations to the Solicitor General;

(f) hearing and disposing of appeals by members of police forces in accordance with Part V.

Powers of Commission in hearings, investigations and inquiries R.S.O. 1980, c. 411

(2) When the Commission conducts a hearing, investigation or inquiry, it has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the proceeding as if it were an inquiry under that Act.

Counsel

(3) At the Commission's request, the Solicitor General may appoint counsel to assist the Commission in a hearing, investigation or inquiry.

Sanctions for failure to comply with prescribed standards of police services

23.—(1) If the Commission is of the opinion, after holding a hearing, that a board or municipal police force has flagrantly or repeatedly failed to comply with prescribed standards of police services, the Commission may take any of the following measures or any combination of them:

1. Suspending the chief of police, one or more members of the board, or the whole board, for a specified period.

2. Removing the chief of police, one or more members of the board, or the whole board from office.

3. Disbanding the police force and requiring the Ontario Provincial Police to provide police services for the municipality.

4. Appointing an administrator to perform specified functions with respect to police matters in the municipality for a specified period.

Sanctions for failure to comply with requirements respecting employment equity plans

(2) If the Commission is of the opinion, after holding a hearing, that a board or municipal chief of police has failed to comply with the requirements of this Act and the regulations respecting employment equity plans, the Commission may

take any of the following measures or any combination of them:

1. Suspending the chief of police, one or more members of the board, or the whole board, for a specified period.

2. Removing the chief of police, one or more members of the board, or the whole board from office.

3. Appointing an administrator to perform specified functions with respect to employment equity, recruitment and promotion in the police force for a specified period.

Suspension with or without pay

(3) If the Commission suspends the chief of police or members of the board who are entitled to remuneration under subsection 27 (12), it shall specify whether the suspension is with or without pay.

Defence

(4) The Commission shall not take measures under subsection (2) with respect to the failure of a chief of police to meet specific goals or timetables contained in the employment equity plan if the Commission finds that the chief of police has made all reasonable efforts to meet them.

Powers of administrator

(5) An administrator appointed under paragraph 4 of subsection (1) or paragraph 3 of subsection (2) has all the powers necessary for the performance of his or her functions.

Replacement of chief of police

(6) If the Commission suspends or removes the chief of police, it may appoint a person to replace him or her.

Parties

(7) The parties to the hearing are the chief of police, the board, any member of the board that the Commission designates and, if the Commission so directs, the association or associations representing members of the police force.

Idem

(8) The Commission may add parties at any stage of the hearing on the conditions it considers proper.

Replacement of suspended or removed member

(9) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member.

Consequences of removal and suspension

(10) A member who has been removed shall not subsequently be a member of any board, and a member who has been suspended shall not be reappointed during the period of suspension.

Appeal to Divisional Court

(11) A party may appeal to the Divisional Court within thirty days of receiving notice of the Commission's decision.

Grounds for appeal

(12) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Idem

(13) An appeal may also be made from a finding that a chief of police has made all reasonable efforts to meet the specific goals and timetables contained in an employment equity plan.

Appeal by non-parties

(14) If the consent of the Attorney General is sought within thirty days of the Commission's decision and is given, a person who is not a party may appeal under subsection (13) as if he or she were a party.

Emergency, interim order

24.—(1) The Commission may make an interim order under subsection 23 (1), without notice and without holding a hearing, if it is of the opinion that an emergency exists and that the interim order is necessary in the public interest.

Restriction

(2) The Commission shall not remove a person from office or disband a police force by means of an interim order.

Investigations

25.—(1) The Commission may, at the Solicitor General's request, at a municipal council's request or of its own motion, investigate, inquire into and report on,

(a) the conduct or the performance of duties of a municipal chief of police or other municipal police officer, an auxiliary member of a municipal police force, a special constable, a by-law enforcement officer or a member of a board;

(b) the administration of a municipal police force;

(c) the manner in which police services are provided for a municipality;

(d) the police needs of a municipality.

Cost of investigation

(2) The cost of an investigation conducted at a council's request shall be paid by the municipality, unless the Solicitor General directs otherwise.

Report

(3) The Commission shall communicate its report of an investigation under subsection (1) to the Solicitor General at his or her request and to the board or council at its request, and may communicate the report to any other person as the Commission considers advisable.

Penalties, member of police force

(4) If the Commission concludes after a hearing that a member of a police force is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may direct that the member be,

(a) demoted as the Commission specifies, permanently or for a specified period;

(b) dismissed; or

(c) retired, if the member is entitled to retire.

Penalties, member of board

(5) If the Commission concludes, after a hearing, that a member of a board is guilty of misconduct or is not performing or is incapable of performing the duties of his or her position in a satisfactory manner, it may remove or suspend the member.

Appeal to Divisional Court

(6) A member of a police force or of a board on whom a penalty is imposed under subsection (4) or (5) may appeal to the Divisional Court within thirty days of receiving notice of the Commission's decision.

Grounds for appeal

(7) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Replacement of suspended or removed member

(8) If the Commission suspends a member of a board or removes him or her from office, the municipal council or the Lieutenant Governor in Council, as the case may be, shall appoint a person to replace the member.

Consequences of removal and suspension

(9) A member who has been removed shall not subsequently be a member of any board, and a member who has been suspended shall not be reappointed during the period of suspension.

Inquiries

26.—(1) The Lieutenant Governor in Council may direct the Commission to inquire into and report to the Lieutenant Governor in Council on any matter relating to crime or law enforcement, and shall define the scope of the inquiry in the direction.

Application of R.S.O. 1980, c. 411, s. 6

(2) Section 6 (stated case) of the *Public Inquiries Act* applies to inquiries conducted under this section.

Rights of witnesses

(3) Witnesses at inquiries conducted under this section have the right to retain and instruct counsel and all the other rights of witnesses in civil courts.

Offence

(4) Any person who knowingly discloses, without the Commission's consent, evidence taken in private at an inquiry conducted under this section or information likely to identify the witness is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

PART III

MUNICIPAL POLICE SERVICES BOARDS

Police services boards

27.—(1) There shall be a police services board for every municipality that maintains a police force.

Boards of commissioners of police continued as police services boards R.S.O. 1980, c. 381

(2) Every board of commissioners of police constituted or continued under the *Police Act* or any other Act and in existence on the day this Act comes into force is continued as a police services board.

Name

(3) A board shall be known as "*(insert name of municipality)* Police Services Board".

Three-member boards in smaller municipalities R.S.O. 1980, c. 31

(4) The board of a municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* does not exceed 25,000 shall consist of,

(a) the head of the municipal council, or another council member appointed by resolution of the council; and

(b) two persons appointed by the Lieutenant Governor in Council.

Five-member boards in larger municipalities

(5) The board of a municipality, other than a regional or metropolitan municipality, whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 25,000 shall consist of,

(a) the head of the municipal council, or another council member appointed by resolution of the council;

(b) one person appointed by resolution of the council; and

(c) three persons appointed by the Lieutenant Governor in Council.

Smaller municipalities, option to expand board

(6) The council of a municipality to which subsection (4) would otherwise apply may determine, by resolution, that the composition of its board shall be as described in subsection (5).

Transition

R.S.O. 1980, c. 381

(7) A resolution passed under clause 8 (2a) (b) of the *Police Act* before the day this Act comes into force shall be deemed to have been passed under subsection (6).

Regional and metropolitan municipalities

(8) The board of a regional or metropolitan municipality shall consist of,

(a) two council members appointed by resolution of the municipal council; and

(b) three persons appointed by the Lieutenant Governor in Council.

Seven-member boards in certain circumstances

R.S.O. 1980, c. 31

(9) The council of a regional or metropolitan municipality whose population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 300,000 may apply to the Lieutenant Governor in Council for an increase in the size of its board; if the Lieutenant Governor in Council approves the application, the board shall consist of,

(a) the head of the council, or another council member appointed by resolution of the council;

(b) two council members appointed by resolution of the council; and

(c) four persons appointed by the Lieutenant Governor in Council.

Vacancies

(10) If the position of a member appointed by the Lieutenant Governor in Council becomes vacant, the Solicitor General may appoint a replacement to act until the Lieutenant Governor in Council makes a new appointment.

Idem

(11) If the position of a member who is appointed by a municipal council or holds office by virtue of being the head of a municipal council becomes vacant, the board shall notify the council, which shall forthwith appoint a replacement.

Remuneration

(12) The council shall pay the members of the board who are appointed by the Lieutenant Governor in Council or Solicitor General remuneration that is at least equal to the prescribed amount.

Judges and justices of the peace ineligible

(13) No judge or justice of the peace shall be appointed as a member of a board.

Transition, judges and justices of the peace

(14) A judge or justice of the peace who is a member of a board on the day this Act comes into force may continue to be a member until the third anniversary of that day.

Transition, municipalities without boards

(15) In the case of a municipality that is required by subsection (1) to have a police services board and that does not, on the day this Act comes into force, have a board of commissioners of police, the following rules apply:

1. Subsection (1) does not apply to the municipality until the first anniversary of the coming into force of this Act.

2. Until subsection (1) applies to the municipality, the council shall perform the duties and may exercise the powers that this Act imposes and confers on police services boards.

Election of chair

28. The members of a board shall elect a chair at the board's first meeting in each year.

Protection from personal liability

29.—(1) No action or other proceeding for damages shall be instituted against a member of a board for any act done in good faith in the execution or intended execution of his or her duty or for any alleged neglect or default in the execution in good faith of that duty.

Board's liability

(2) Subsection (1) does not relieve a board of liability for a member's acts or omissions, and the board is liable as if that subsection had not been enacted and as if the member were the board's employee.

Board may contract, sue and be sued

30.—(1) A board may contract, sue and be sued in its own name.

Members not liable for board's contracts

(2) The members of a board are not personally liable for the board's contracts.

Responsibilities of boards

31.—(1) A board is responsible for the provision of police services and for law enforcement and crime prevention in the municipality and shall,

(a) appoint the members of the municipal police force;

(b) generally determine, after consultation with the chief of police, objectives and priorities with respect to police services in the municipality;

(c) establish policies for the effective management of the police force;

(d) recruit and appoint the chief of police and any deputy chief of police, and annually determine their remuneration and working conditions, taking their submissions into account;

(e) direct the chief of police and monitor his or her performance;

(f) establish an employment equity plan in accordance with section 48 and the regulations, review its implementation by the chief of police and receive regular reports from him or her on that subject;

(g) receive regular reports from the chief of police on disclosures and decisions made under section 49 (secondary activities);

(h) establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50;

(i) establish guidelines for the administration by the chief of police of the public complaints system under Part VI;

(j) review the administration by the chief of police of the public complaints system and receive regular reports from him or her on that subject.

Members of police force under board's jurisdiction

(2) The members of the police force, whether they were appointed by the board or not, are under the board's jurisdiction.

Restriction

(3) The board may give orders and directions to the chief of police, but not to other members of the police force, and no individual member of the board shall give orders or directions to any member of the police force.

Idem

(4) The board shall not direct the chief of police with respect to specific operational decisions or with respect to the day-to-day operation of the police force.

Training of board members

(5) The board shall ensure that its members undergo any training that the Solicitor General may provide or require.

Rules re management of police force

(6) The board may, by by-law, make rules for the effective management of the police force.

Guidelines re secondary activities

(7) The board may establish guidelines consistent with section 49 for police officers' disclosure of secondary activities to the chief of police and for the decisions of the chief of police under subsection 49 (4).

Oath of office

32. Before entering on the duties of office, a member of a board shall take an oath or affirmation of office in the prescribed form.

Agreement to constitute joint board R.S.O. 1980, c. 31

33.—(1) Despite any special Act, two or more municipalities whose combined population according to the last enumeration taken under section 14 of the *Assessment Act* exceeds 5,000 may enter into an agreement to constitute a joint board.

Idem

(2) The agreement must be authorized by by-laws of the councils of the participating municipalities and requires the consent of their boards.

Composition of board

(3) The joint board shall consist of,

(a) the heads of the councils of the participating municipalities; and

(b) other members appointed by the Lieutenant Governor in Council.

Application of Act to joint boards

(4) The provisions of this Act that apply to boards also apply with necessary modifications to joint boards.

Delegation

34. A board may delegate to two or more of its members any authority conferred on it by this Act, except,

(a) the authority to hear the appeals of police officers found guilty of misconduct under Part V, which must be exercised by a quorum; and

(b) the authority to bargain under Part VIII, which the board may delegate to one or more members.

Meetings

35.—(1) The board shall hold at least four meetings each year.

Quorum

(2) A majority of the members of the board constitutes a quorum.

Proceedings open to the public

(3) Meetings and hearings conducted by the board shall be open to the public, subject to subsection (4), and notice of them shall be published in the manner that the board determines.

(4) The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that, Exception

(a) matters involving public security may be disclosed and, having regard to the circumstances, the desirability of avoiding their disclosure in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public; or

(b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

36. A document purporting to be a by-law of the board signed by a member or purporting to be a copy of such a by-law certified correct by a member is admissible in evidence without proof of the signature or authority of the person signing. Admissibility of documents

37. In performing its duties under this Act, a board has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the board as if it were conducting an inquiry under that Act. Power with respect to witnesses R.S.O. 1980, c. 411

38. A municipal police force shall consist of a chief of police and such other police officers and other employees as the board considers adequate, and shall be provided with the equipment and facilities that the board considers adequate. Municipal police force

39.—(1) Each year, the board shall submit to the municipal council or to each council responsible for maintaining the police force, as the case may be, its estimates for the year. Estimates

(2) The estimates shall be submitted at least one month before the beginning of the fiscal year of the municipality or municipalities, as the case may be; if they are to be submitted to municipalities whose fiscal years begin on different dates, they shall be submitted to all the councils at least one month before the earliest date. Time

(3) The estimates shall show, separately, the amounts that will be required, Idem

(a) to maintain the police force and provide it with equipment and facilities; and

(b) to pay the expenses of the board's operation other than the remuneration of board members.

Commission hearing in case of disagreement

(4) If the council does not approve the board's estimates or disagrees with the board on the number of members of the police force that is adequate or the equipment and facilities that are adequate, the Commission shall determine the question after a hearing.

Reduction or abolition of police force

40.—(1) A board may terminate the employment of a member of the police force for the purpose of abolishing the police force or reducing its size if the Commission consents and if the abolition or reduction does not contravene this Act.

Criteria for Commission's consent

(2) The Commission shall consent to the termination of the employment of a member of the police force under subsection (1) only if,

(a) the member and the board have made an agreement dealing with severance pay or agreed to submit the matter to arbitration; or

(b) the Commission has made an order under subsection (3).

Order imposing arbitration

(3) If the member and the board do not make an agreement dealing with severance pay and do not agree to submit the matter to arbitration, the Commission, if it is of the opinion that it would be appropriate to permit the abolition of the police force or the reduction of its size, may order the member and the board to submit the matter to arbitration and may give any necessary directions in that connection.

Arbitration

(4) Section 124 applies to an arbitration referred to in this section with necessary modifications.

PART IV

POLICE OFFICERS AND OTHER POLICE STAFF

CHIEF OF POLICE

Duties of chief of police

41.—(1) The duties of a chief of police include,

(a) in the case of a municipal police force, administering the police force and overseeing its operation in accordance with the objectives, priorities and policies established by the board under subsection 31 (1);

(b) ensuring that members of the police force carry out their duties in accordance with this Act and the regulations and in a manner that reflects the needs of the community, and that discipline is maintained in the police force;

(c) ensuring that the police force provides community-oriented police services;

(d) administering discipline in accordance with Part V;

(e) administering the public complaints system under Part VI;

(f) implementing the employment equity plan established under section 48 and the regulations;

(g) in the case of a municipal police force, reporting to the board at regular intervals on public complaints and on the implementation of the employment equity plan.

Chief of police reports to board

(2) The chief of police reports to the board and shall obey its lawful orders and directions.

POLICE OFFICERS

Duties of police officer

42.—(1) The duties of a police officer include,

(a) preserving the peace;

(b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;

(c) assisting victims of crime;

(d) apprehending criminals and other offenders and others who may lawfully be taken into custody;

(e) laying charges, prosecuting and participating in prosecutions;

(f) executing warrants that are to be executed by police officers and performing related duties;

(g) performing the lawful duties that the chief of police assigns;

(h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;

(i) completing the prescribed training.

Power to act throughout Ontario

(2) A police officer has authority to act as such throughout Ontario.

Powers and duties of common law constable

(3) A police officer has the powers and duties ascribed to a constable at common law.

Criteria for hiring

43.—(1) No person shall be appointed as a police officer unless he or she,

(a) is a Canadian citizen or a permanent resident of Canada;

(b) is at least eighteen years of age;

(c) is physically and mentally able to perform the duties of the position, having regard to his or her own safety and the safety of members of the public;

(d) is of good moral character and habits; and

(e) has successfully completed at least four years of secondary school education or its equivalent.

Idem

(2) A candidate for appointment as a police officer shall provide any relevant information or material that is lawfully requested in connection with his or her application.

Probationary period

44.—(1) A municipal police officer's probationary period begins on the day he or she is appointed and ends on the later of,

(a) the first anniversary of the day of appointment;

(b) the first anniversary of the day the police officer completes an initial period of training at the Ontario Police College.

Time for completing initial training

(2) The police officer shall complete the initial period of training within six months of the day of appointment.

Termination of employment during probationary period

(3) A board may terminate a police officer's employment at any time during his or her probationary period but, before doing so, shall give the police officer reasonable information

with respect to the reasons for the termination and an opportunity to reply, orally or in writing, as the board may determine.

Only one probationary period

(4) Subsections (1), (2) and (3) do not apply to a police officer who has completed a probationary period with another municipal police force.

Oaths of office and secrecy

45. A person appointed to be a police officer shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

Political activity

46. No municipal police officer shall engage in political activity, except as the regulations permit.

MEMBERS OF POLICE FORCES

Accommodation of needs of disabled member of municipal police force 1981, c. 53

47.—(1) Subject to subsection (2), if a member of a municipal police force becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the board shall accommodate his or her needs in accordance with the *Human Rights Code, 1981*.

Undue hardship

(2) The board may discharge the member, or retire him or her if entitled to retire, if, after holding a hearing at which the evidence of two legally qualified medical practitioners is received, the board,

(a) determines, on the basis of that evidence, that the member is mentally or physically disabled and as a result incapable of performing the essential duties of the position, and what duties the member is capable of performing; and

(b) concludes that the member's needs cannot be accommodated without undue hardship on the board.

Idem, O.P.P.

(3) Subject to subsection (4), if a member of the Ontario Provincial Police becomes mentally or physically disabled and as a result is incapable of performing the essential duties of the position, the Commissioner shall accommodate the member's needs in accordance with the *Human Rights Code, 1981*.

Idem

(4) The member may be discharged, or retired if entitled to retire, if, after holding a hearing at which the evidence of two legally qualified medical practitioners is received, the Commissioner or a person whom he or she designates,

(a) determines, on the basis of that evidence, that the member is mentally or physically disabled and as a result incapable of performing the essential duties of the position, and what duties the member is capable of performing; and

(b) concludes that the member's needs cannot be accommodated without undue hardship on the Crown in right of Ontario.

Appeal

(5) A member of a police force who is discharged or retired under subsection (2) or (4) may appeal to the Commission by serving a written notice on the Commission and on the board or the Commissioner, as the case may be, within thirty days of receiving notice of the decision.

Powers of Commission

(6) The Commission may confirm, alter or revoke the decision or may require the board or Commissioner, as the case may be, to rehear the matter.

Decision

(7) The Commission shall promptly give written notice of its decision, with reasons, to the appellant and to the board or Commissioner, as the case may be.

Participation of members of Commission

(8) No member of the Commission shall participate in the decision unless he or she was present throughout the hearing of the appeal and, except with the consent of the appellant, no decision of the Commission shall be given unless all members who were present throughout the hearing participate in the decision.

Employment equity plans

48.—(1) Every police force shall have an employment equity plan prepared in accordance with this section and the regulations.

Contents of plan

(2) An employment equity plan shall provide for,

(a) the elimination of systemic barriers to the recruitment and promotion of persons who are members of prescribed groups;

(b) the implementation of positive measures with respect to the recruitment and promotion of those persons, so as to make the police force more representative of the community or communities it serves; and

(c) specific goals and timetables with respect to the elimination of systemic barriers, the implementation

of positive measures and the composition of the police force.

Board to prepare plan for municipal police force

(3) In the case of a municipal police force, the board shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Commissioner to prepare plan for O.P.P.

(4) In the case of the Ontario Provincial Police, the Commissioner shall prepare the employment equity plan and submit it to the Solicitor General for approval.

Solicitor General

(5) Before approving the employment equity plan, the Solicitor General may require that changes be made to it.

Restrictions on secondary activities

49.—(1) A member of a police force shall not engage in any activity,

(a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;

(b) that places him or her in a position of conflict of interest, or is likely to do so;

(c) that would otherwise constitute full-time employment for another person; or

(d) in which he or she has an advantage derived from employment as a member of a police force.

Exception, paid duty

(2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force.

Disclosure to chief of police

(3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police.

Decision of chief of police

(4) The chief of police shall decide whether the member is permitted to engage in the activity and the member shall comply with that decision.

Liability for torts

50.—(1) The board or the Crown in right of Ontario, as the case may be, is liable in respect of torts committed by members of the police force in the course of their employment.

Indemnification of member of municipal police force

(2) The board may, in accordance with the guidelines established under clause 31 (1) (h), indemnify a member of the police force for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of any other proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.

Agreement

(3) The police force and the board may, in an agreement made under Part VIII, provide for indemnification for the legal costs of members of the police force, except the legal costs of a member who is found guilty of a criminal offence; if such an agreement exists, the board shall indemnify members in accordance with the agreement and subsection (2) does not apply.

Council responsible for board's liabilities

(4) The council is responsible for the liabilities incurred by the board under subsections (1), (2) and (3).

Indemnification of member of O.P.P.

(5) The Treasurer of Ontario may indemnify, out of the Consolidated Revenue Fund, a member of the Ontario Provincial Police for reasonable legal costs incurred,

(a) in the defence of a civil action, if the member is not found to be liable;

(b) in the defence of a criminal prosecution, if the member is found not guilty;

(c) in respect of any other proceeding in which the member's manner of execution of the duties of his or her employment was an issue, if the member is found to have acted in good faith.

Agreement

R.S.O. 1980, c. 418

(6) The Ontario Provincial Police and the Crown in right of Ontario may, in an agreement made under the *Public Service Act*, provide for indemnification for the legal costs of members of the police force, except the legal costs of a member who is found guilty of a criminal offence; if such an agreement exists, the Treasurer shall indemnify members in accordance with the agreement and subsection (5) does not apply.

Police cadets

51.—(1) With the board's approval, a municipal chief of police may appoint persons as police cadets to undergo training.

Idem

(2) A police cadet is a member of the municipal police force.

Auxiliary members of municipal police force

52.—(1) With the Commission's approval, a board may appoint auxiliary members of the police force.

Notice of suspension or termination

(2) If the board suspends or terminates the appointment of an auxiliary member of the police force, it shall promptly give the Commission written notice of the suspension or termination.

Auxiliary members of O.P.P.

(3) The Commissioner may appoint auxiliary members of the Ontario Provincial Police.

Authority of auxiliary members of police force

(4) An auxiliary member of a police force has the authority of a police officer if he or she is accompanied or supervised by a police officer and is authorized to perform police duties by the chief of police.

Restriction

(5) The chief of police may authorize an auxiliary member of the police force to perform police duties only in special circumstances, including an emergency, that the police officers of the police force are not sufficiently numerous to deal with.

Oaths of office and secrecy

(6) A person appointed to be an auxiliary member of a police force shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

SPECIAL CONSTABLES

Special constables appointed by board

53.—(1) With the Commission's approval, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient.

Special constables appointed by Commissioner

(2) With the Commission's approval, the Commissioner may appoint a special constable to act for the period, area and purpose that the Commissioner considers expedient.

Powers of police officer

(3) The appointment of a special constable may confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment.

Restriction

(4) A special constable shall not be employed by a police force to perform on a permanent basis, whether part-time or full-time, all the usual duties of a police officer.

Idem

(5) Subsection (4) does not prohibit police forces from employing special constables to escort and convey persons in custody and to perform duties related to the responsibilities of boards under the *Court Security Act*.

R.S.O. 1980, c. 381

Suspension or termination of appointment

(6) The power to appoint a special constable includes the power to suspend or terminate the appointment, but if a board or the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission.

Commission

(7) The Commission also has power to suspend or terminate the appointment of a special constable.

Information and opportunity to reply

(8) Before a special constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the board, Commissioner or Commission, as the case may be, may determine.

Oaths of office and secrecy

(9) A person appointed to be a special constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

FIRST NATIONS CONSTABLES

First Nations Constables

54.—(1) With the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specified duties.

Further approval R.S.C. 1985, c. I-5

(2) If the specified duties of a First Nations Constable relate to a reserve as defined in the *Indian Act* (Canada), the appointment also requires the approval of the reserve's police governing authority or band council.

Powers of police officer

(3) The appointment of a First Nations Constable confers on him or her the powers of a police officer for the purpose of carrying out his or her specified duties.

Duty to consult

(4) The Commissioner shall not suspend or terminate the appointment of a First Nations Constable whose specified duties relate to a reserve without first consulting with the police governing authority or band council that approved the appointment.

Suspension or termination of appointment

(5) The power to appoint a First Nations Constable includes the power to suspend or terminate the appointment, but if the Commissioner suspends or terminates an appointment, written notice shall promptly be given to the Commission.

Commission

(6) The Commission also has power to suspend or terminate the appointment of a First Nations Constable.

Information and opportunity to reply

(7) Before a First Nations Constable's appointment is terminated, he or she shall be given reasonable information with respect to the reasons for the termination and an opportunity to reply, orally or in writing as the Commissioner or Commission, as the case may be, may determine.

Oaths of office and secrecy

(8) A person appointed to be a First Nations Constable shall, before entering on the duties of his or her office, take oaths or affirmations of office and secrecy in the prescribed form.

EMERGENCIES

Emergencies

55.—(1) In an emergency, the Solicitor General may make an agreement with the Crown in right of Canada or of another province or with any of its agencies for the provision of police services.

Authority to act as police officers

(2) The agreement authorizes all peace officers to whom it relates to act as police officers in the area to which the agreement relates.

Application of R.S.O. 1980, c. 539

(3) For the purpose of the *Workers' Compensation Act*, the relationship between a member of a police force and the body that employs him or her continues as if an agreement had not been made under this section.

Expense of calling out Canadian Forces

(4) If the services of the Canadian Forces are provided under this section, the municipality in whose territory the services are required shall pay all the related expenses.

Resignation during emergency prohibited R.S.C. 1985, c. N-5

(5) Subject to sections 33 and 34 of the *National Defence Act* (Canada), while an agreement made under this section is in force, no member of a police force that has jurisdiction in the area to which the agreement relates shall resign without the consent of the chief of police.

PART V

DISCIPLINARY PROCEEDINGS

Misconduct

56. A police officer is guilty of misconduct if he or she,

(a) commits an offence described in a prescribed code of conduct;

(b) contravenes section 46 (political activity);

(c) engages in an activity that contravenes subsection 49 (1) (secondary activities) without the permission of his or her chief of police, being aware that the activity may contravene that subsection;

(d) contravenes subsection 55 (5) (resignation during emergency);

(e) contravenes section 57 (inducing misconduct, withholding services);

(f) contravenes subsection 96 (4) (photography at hearing);

(g) contravenes subsection 100 (6) (obstructing Police Complaints Commissioner);

(h) contravenes subsection 108 (2) (confidentiality);

(i) contravenes section 117 (trade union membership);

(j) deals with personal property, other than money or a firearm, in a manner that is not consistent with section 132;

(k) deals with money in a manner that is not consistent with section 133;

(l) deals with a firearm in a manner that is not consistent with section 134;

(m) contravenes a regulation made under paragraph 15 (equipment), 16 (use of force), 17 (standards of dress, police uniforms) 20 (police pursuits) or 21 (records) of subsection 135 (1).

Inducing misconduct

57.—(1) No person, including a member of a police force, shall,

(a) induce or attempt to induce a member of a police force to withhold his or her services; or

(b) induce or attempt to induce a police officer to commit misconduct.

Withholding services

(2) No member of a police force shall withhold his or her services.

Offence

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more

than $2,000 or to imprisonment for a term of not more than one year, or to both.

Consent of Solicitor General

(4) No prosecution shall be instituted under this section without the consent of the Solicitor General.

Chief to investigate misconduct

58.—(1) Any apparent or alleged misconduct by a police officer shall be investigated by his or her chief of police.

Effect of complaint

(2) When a complaint is made under Part VI with respect to apparent or alleged misconduct by a police officer, the following rules apply:

1. The complaint shall be dealt with in accordance with Part VI, and recourse shall be had to this Part only as Part VI permits.

2. Any investigation of the matter under this Part and any hearing under section 60 are suspended as soon as the chief of police becomes aware that a complaint has been made.

Procedure in case of misconduct not of serious nature

59.—(1) If the chief of police investigates apparent or alleged misconduct and concludes that the police officer is guilty of misconduct but that the misconduct is not of a serious nature, the following rules apply:

1. The chief of police shall provide the police officer with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

2. The chief of police may then admonish the police officer and may cause an entry concerning the matter, the action taken and the police officer's reply to be made in his or her employment record.

3. If the police officer refuses to accept the admonition, the chief of police shall not cause particulars to be recorded without first holding a hearing.

Expungement

(2) An entry made in the police officer's employment record under paragraph 2 of subsection (1) shall be expunged from the record two years after being made if during that time no other entries concerning misconduct have been made in the record under this Part or Part VI.

Agreement

(3) Nothing in this section affects agreements between boards and police officers or associations that permit other penalties than admonition to be administered, if the police

officer in question consents, without a hearing under section 60.

Hearing

60.—(1) A chief of police may hold a hearing to determine whether a police officer belonging to his or her police force is guilty of misconduct.

Prosecutor

(2) The chief of police shall designate to be prosecutor at the hearing,

(a) a police officer of the rank of sergeant or higher;

(b) if there is none of that rank, a police officer of a rank equal to or higher than that of the police officer who is the subject of the hearing; or

(c) a legal counsel.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Examination of evidence

(4) Before the hearing, the police officer shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence.

Idem

(5) If the hearing is being conducted as a result of a complaint made under Part VI, the complainant shall likewise be given an opportunity to examine evidence and reports before the hearing.

Police officer not required to give evidence
R.S.O. 1980, c. 484

(6) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(7) In the case of a hearing that is being conducted as a result of a complaint made under Part VI, no statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Person conducting hearing not to communicate in relation to subject-matter of hearing

(8) The person conducting the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or person's counsel or representative, unless the police officer and the prosecutor receive notice and have an opportunity to participate.

(9) However, the person conducting the hearing may seek legal advice from an adviser independent of the police officer and the prosecutor, and in that case the nature of the advice shall be communicated to them so that they make submissions as to the law. Exception

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them. Release of exhibits

(11) If the police officer is charged with an offence under a law of Canada or of a province or territory in connection with the alleged misconduct, the hearing shall continue unless the Crown Attorney advises the chief of police that it should be stayed until the conclusion of the court proceedings. Stay

(12) If six months have elapsed since the facts on which an allegation of misconduct is based first came to the attention of the chief of police, no notice of hearing shall be served unless the board (in the case of a municipal police officer) or the Commissioner (in the case of a member of the Ontario Provincial Police) is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing. Six-month limitation period, exception

61.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may, Penalties

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

(f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

(2) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day. Calculation

Idem

(3) Instead of or in addition to a penalty described in subsection (1), the chief of police may reprimand the police officer.

Dismissal and demotion

(4) The chief of police shall not impose the penalties of dismissal or demotion unless the notice of hearing or a subsequent notice served on the police officer indicated that they might be imposed if the misconduct were proved on clear and convincing evidence.

Notice of decision

(5) The chief of police shall promptly give written notice of the decision, with reasons, to the police officer and, in the case of a municipal police force, to the board.

Idem

(6) If the hearing was conducted as a result of a complaint made under Part VI, the chief of police shall also give notice of the decision, with reasons, to the complainant and to the Police Complaints Commissioner.

Police officer's employment record

(7) No reference to the allegations of misconduct or the hearing shall be made in the police officer's employment record, and the matter shall not be taken into account for any purpose relating to his or her employment, unless,

(a) misconduct is proved on clear and convincing evidence; or

(b) the police officer resigns before the matter is finally disposed of.

Misconduct by municipal chief of police

62.—(1) A board may hold a hearing to determine whether the chief of police is guilty of misconduct, and this Part applies with necessary modifications.

Commission hearing

(2) The chief of police may, by serving a notice to that effect on the board and the Commission, require that the Commission hold the hearing instead of the board.

Appeal to board

63.—(1) A municipal police officer on whom a penalty is imposed under section 61 may appeal to the board by serving a notice of appeal on the board and the chief of police within fifteen days of receiving notice of the decision.

Hearing

(2) The board shall hear the appeal on the record, but may receive new or additional evidence as it considers just.

Powers of board

(3) The board may confirm, alter or revoke the decision or may require the chief of police to rehear the matter.

Board's decision

(4) The board shall promptly give written notice of its decision, with reasons, to the chief of police and the police officer.

Participation of members

(5) No member of the board shall participate in the decision unless he or she was present throughout the hearing of the appeal and, except with the police officer's consent, no decision of the board shall be given unless all members who were present throughout the hearing participate in the decision.

Members not to communicate in relation to subject-matter of appeal

(6) The members of the board who participate in the decision shall not communicate directly or indirectly in relation to the subject-matter of the appeal with any person or person's counsel or representative, unless the police officer and the chief of police receive notice and have an opportunity to participate.

Exception

(7) However, the board may seek legal advice from an adviser independent of the police officer and the chief of police, and in that case the nature of the advice shall be communicated to them so that they may make submissions as to the law.

Further appeal to Commission

(8) The police officer may appeal to the Commission from the board's decision by serving a notice of appeal on the Commission, the board and the chief of police within thirty days of receiving notice of the decision.

Hearing by Commission instead of board

64. Instead of hearing a police officer's appeal under section 63, the board may, on its own initiative or on the application of the police officer or the chief of police, require the Commission to hear the appeal.

O.P.P., appeal to Commission from Commissioner's decision

65. A member of the Ontario Provincial Police on whom a penalty is imposed under section 61 may appeal to the Commission by serving a written notice on the Commission and the Commissioner within thirty days of receiving notice of the decision.

Exception in case of public complaint

66. If the hearing was conducted as a result of a complaint made under Part VI, sections 63 and 65 do not apply and the police officer may only appeal in accordance with that Part.

Appeals to Commission

67. Subsections 63 (2) to (7) apply to appeals heard by the Commission as if references to the board were references to the Commission and, in the case of an appeal from a board's decision, as if references to the chief of police were references to the board.

Extension of time for appeals

68. The board or Commission may grant an extension of the time provided for giving it a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Delegation

69. A chief of police may authorize any member of the police force to exercise any power or perform any duty of the chief of police referred to in this Part, subject to the following rules:

1. A hearing under section 60 shall be conducted by a police officer of the rank of inspector or higher.

2. A police officer from another police force who meets the requirements of paragraph 1 may conduct the hearing, with the approval of his or her chief of police.

3. The measures referred to in subsection 59 (1) (procedure in case of misconduct not of serious nature) shall be taken by a police officer of the rank of inspector or higher.

Notice

70.—(1) A notice required to be given under this Part is sufficiently given if delivered personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Suspension

71.—(1) If a police officer is suspected of or charged with an offence under a law of Canada or of a province or territory or is suspected of misconduct, the chief of police may suspend him or her from duty with pay.

Revocation and reimposition of suspension

(2) The chief of police may revoke the suspension and later reimpose it, repeatedly if necessary, as he or she considers appropriate.

Duration of suspension

(3) Unless the chief of police revokes the suspension, it shall continue until the final disposition of the proceeding in which the police officer's conduct is at issue.

Conditions of suspension

(4) While suspended, the police officer shall not exercise any of the powers vested in him or her as a police officer or

wear or use clothing or equipment that was issued to him or her in that capacity.

Suspension without pay

(5) If a police officer is convicted of an offence and sentenced to a term of imprisonment, the chief of police may suspend him or her without pay, even if the conviction or sentence is under appeal.

Earnings from other employment

72.—(1) If a police officer is suspended with pay, the pay for the period of suspension shall be reduced by the amount that he or she earns from other employment during that period.

Exception

(2) Subsection (1) does not apply to earnings from other employment that was commenced before the period of suspension.

PART VI

PUBLIC COMPLAINTS

Definitions

73.—(1) In this Part,

"bureau" means the public complaints investigation bureau of a police force;

"Commissioner" means the Police Complaints Commissioner appointed under section 99.

Police officer

(2) In this Part, unless the context indicates otherwise, a reference to a police officer is a reference to the police officer who is the subject of a complaint.

Attorney General

74. This Part shall be administered by the Attorney General.

Application of Part

75. Complaints by members of the public about the conduct of police officers shall be dealt with in accordance with this Part.

Bureau

76.—(1) Every chief of police shall establish and maintain a public complaints investigation bureau.

Staff

(2) The chief of police shall ensure that the bureau is supplied with sufficient staff to perform its duties effectively.

Small police forces

(3) If the police force has fewer than twenty police officers, the bureau of another police force may, under an agreement made in accordance with section 7 (municipal agreements for sharing police services) or 10 (municipal agreements for provi-

sion of police services by O.P.P.), act as the first-named police force's bureau as well; in that case, subsections (1) and (2) do not apply.

INITIAL HANDLING OF COMPLAINT

Complaint by member of public

77.—(1) A member of the public may make a complaint about the conduct of a police officer, orally or in writing,

(a) at the bureau of the police force to which the complaint relates, or at a station or detachment of that police force; or

(b) at an office of the Commissioner; or

(c) at any bureau, police station or detachment.

Recording of complaint

(2) The person who receives the complaint shall record it on a form provided by the Commissioner and shall give a copy of the completed form to the person who makes the complaint.

Information

(3) The person who makes the complaint shall also be given a statement, in a form provided by the Commissioner, that sets out the procedures followed in dealing with a complaint and describes the rights of a complainant.

Preservation of evidence, preliminary investigation

(4) The person on duty who is in charge of a place when a complaint is received shall,

(a) take all reasonable steps to ensure that evidence that might otherwise be lost is secured immediately;

(b) if he or she considers it appropriate, ensure that a preliminary investigation is conducted immediately; and

(c) ensure that a report on the evidence and on the preliminary investigation, if any, is forthwith prepared and attached to the complaint.

Copies of complaint

(5) The person who records the complaint shall forthwith send copies of it,

(a) to the bureau, the chief of police and the Commissioner, in the case of a complaint made at a station or detachment of the police force to which it relates;

(b) to the chief of police and the Commissioner, in the case of a complaint made at the bureau of the police force to which it relates;

(c) to the bureau and the chief of police of the police force to which it relates, in the case of a complaint made at an office of the Commissioner;

(d) to the Commissioner, in the case of a complaint made at a bureau, station or detachment of a different police force than the one to which it relates.

Complaint made to another police force

(6) If a complaint was made at a bureau, station or detachment of a different police force than the one to which it relates, the Commissioner shall forthwith send copies of the complaint and of any report prepared under subsection (4) to the appropriate bureau.

Complaint made more than six months after incident

(7) A complaint that is made more than six months after the incident to which it relates shall be further dealt with under this Part only if the Commissioner so directs.

Complaint by Commissioner

78.—(1) In exceptional circumstances, the Attorney General may direct the Commissioner to make a complaint about the conduct of a police officer.

Recording of complaint, copies

(2) The Commissioner shall cause the complaint to be recorded and shall send copies to the bureau and the chief of police of the force to which it relates.

Complainant

(3) The Commissioner is the complainant in the case of a complaint made under this section.

Non-application of certain provisions

(4) Subsection 77 (7) and sections 80 (notice to potential complainant), 81 (classification of complaint), 82 (reclassification), 83 (informal resolution) and 85 (decision by chief of police re no further action) do not apply to complaints made under this section.

Notice to police officer

79.—(1) When the bureau receives a complaint, the person in charge shall forthwith give the police officer notice of the substance of the complaint, unless in the person's opinion to do so might prejudice the investigation.

Form

(2) The notice shall be written on a form provided by the Commissioner.

Notice to potential complainant

80.—(1) If the complaint is made by a person who was not directly affected by the incident and did not observe it, the Commissioner shall, as soon as possible after receiving the

complaint, attempt to find the person who was directly affected by the incident or who observed it and send him or her a notice.

Idem

(2) The notice shall indicate that a complaint has been made, that the person is entitled to be the complainant in the matter and that the complaint will not be dealt with further unless he or she is the complainant.

Idem

(3) The notice shall also include information about the procedures followed in dealing with a complaint and the rights of a complainant.

No further action

(4) The complaint shall not be further dealt with under this Part if,

(a) no person who was directly affected by the incident or who observed it can be found; or

(b) the person to whom the Commissioner sends the notice does not, within thirty days of the date on which it is sent, file with the Commissioner a request to be the complainant in the matter.

Disciplinary proceeding

(5) However, if a disciplinary proceeding is commenced against the police officer in respect of the complaint, the chief of police shall notify the Commissioner of the proceeding and of its result, and the Commissioner shall then notify the person who made the complaint.

Reopening of matter

(6) If the person to whom the Commissioner sends the notice files a request to be the complainant in the matter after the thirty-day period referred to in subsection (4), the Commissioner may cause the matter to be reopened despite the late filing if he or she considers it advisable to do so.

Classification of complaint

81.—(1) When the bureau receives a complaint, the person in charge shall consider whether it relates to possible misconduct under section 56, to other matters or to both.

Idem

(2) If the person in charge is of the opinion that all or part of the complaint relates only to other matters than possible misconduct, he or she may, with the Commissioner's consent, classify the complaint or part as an inquiry.

Notice and investigation

(3) When all or part of a complaint has been classified as an inquiry, the person in charge shall forthwith notify the complainant and the police officer of the fact and may cause the inquiry to be investigated.

(4) Not more than sixty days after the bureau receives the original complaint, the person in charge shall send the complainant a written response to the inquiry and shall also send the Commissioner a copy of the response, together with a summary of the results of any investigation. Response to complainant

(5) A complaint or part of a complaint that is classified as an inquiry and not reclassified as a complaint and that is the subject of a response under this section need not be dealt with further under this Part. Effect

82.—(1) During the course of the investigation of an inquiry, if the person in charge concludes that all or part of it relates to possible misconduct, he or she may reclassify the inquiry or part as a complaint. Reclassification

(2) After receiving a summary of the results of the investigation of an inquiry, the Commissioner may direct the person in charge to reclassify all or part of it as a complaint. Idem

(3) The person in charge shall forthwith notify the complainant and the police officer of the reclassification, and shall also notify the Commissioner in the case of a reclassification under subsection (1). Notice

(4) An inquiry or part of an inquiry that is reclassified as a complaint shall be dealt with as such under this Part. Effect

INFORMAL RESOLUTION, WITHDRAWAL

83.—(1) If the complainant and the police officer consent, the complaint may be resolved informally by the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or by the Commissioner after that time. Informal resolution by person in charge of bureau

(2) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, its consent is also required for an informal resolution. Board's consent

(3) When a complaint is resolved informally, the resolution shall be recorded on a form provided by the Commissioner and signed by the complainant and police officer. Record

(4) Copies of the record shall be provided to the complainant and the police officer, and to the Commissioner if the complaint was resolved by the person in charge of the bureau. Copies

(5) If the Commissioner is of the opinion that the informal resolution is the result of a misunderstanding or a threat or Commissioner's decision that complaint to continue

other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the informal resolution.

Notice

(6) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

Withdrawal of complaint

84.—(1) The complainant may withdraw the complaint by giving a notice of withdrawal to the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or to the Commissioner after that time.

Idem, complaint made by Commissioner

(2) If the complaint was made under section 78, the Commissioner may withdraw it by giving a notice of withdrawal to the chief of police and a copy to the police officer; subsection (3) applies to the withdrawal but subsections (4) to (7) do not.

Board's consent

(3) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, it shall not be withdrawn without the board's consent.

Copies

(4) A copy of the notice of withdrawal shall be provided to the police officer, and to the Commissioner if the person in charge of the bureau received the notice.

Form

(5) The notice of withdrawal shall be written on a form provided by the Commissioner.

Commissioner's decision that complaint to continue

(6) If the Commissioner is of the opinion that the withdrawal is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the withdrawal.

Notice

(7) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

POWERS OF CHIEF OF POLICE

Decision re no further action

85.—(1) At any time before making a decision under section 90, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith.

Notice

(2) The chief of police shall give the Commissioner, the complainant and the police officer notice of the decision.

Power to commence or continue disciplinary proceeding

86.—(1) The chief of police may commence or continue a disciplinary proceeding against a police officer under Part V even if,

(a) the complaint is withdrawn or is resolved informally; or

(b) the complaint is not to be further dealt with under this Part because of subsection 77 (7) (complaint filed more than six months after incident) or section 80 (complaint made by person not directly affected), or because of a decision by the chief of police under section 85.

Notice to Commissioner and complainant

(2) The chief of police shall give the Commissioner and the complainant notice of a decision to commence or continue a disciplinary proceeding in the circumstances described in subsection (1), and shall also give them notice of the results of the proceeding.

INVESTIGATION OF COMPLAINT

Investigation

87.—(1) The person in charge of the bureau shall cause an investigation to be conducted into the complaint in accordance with the prescribed procedures.

Interim reports

(2) During the course of the investigation, the person in charge shall send the Commissioner, the complainant and the police officer interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the bureau receives the complaint.

Exception

(4) If there are no new matters to report, the person in charge may send the Commissioner, the complainant and the police officer a notice to that effect instead of an interim report.

Idem

(5) The person in charge may withhold an interim report from the complainant or the police officer if, in his or her opinion, it is desirable to do so in order to avoid prejudicing the investigation, but in that case shall forthwith notify the Commissioner of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the person in charge shall cause a final report to be prepared and shall send copies of it to the Commissioner, the chief of police, the complainant and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the complainant, the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

Further investigation

(8) After receiving a final report, the Commissioner may require the chief of police to have the complaint investigated further.

Idem

(9) A summary of the results of any further investigation shall be sent to the persons who received the final report.

Forms

(10) The interim reports and final report shall be written on forms provided by the Commissioner.

Investigation by Commissioner

88.—(1) The Commissioner may conduct the investigation into the complaint, instead of the bureau,

(a) for any reason, after receiving the first interim report or after the thirty-day period referred to in subsection 87 (3) has expired;

(b) if the complainant has commenced a court proceeding against the police officer, the police force or the chief of police, the police services board or the municipality (in the case of a municipal police force) or the Crown in right of Ontario (in the case of the Ontario Provincial Police) in connection with the incident to which the complaint relates;

(c) if the Commissioner has reasonable grounds to believe that undue delay or other unusual circumstances have affected the bureau's investigation or the preparation of its final report; or

(d) if the chief of police requests that the Commissioner conduct the investigation.

Duty of chief of police

(2) The chief of police, if he or she becomes aware that the complainant has commenced a court proceeding of the kind described in clause (1) (b), shall forthwith notify the Commissioner of the fact.

Complaints concerning more than one police force

(3) If the complaint concerns more than one police force, the Commissioner shall conduct the investigation.

Notice

(4) When the Commissioner decides to conduct the investigation, he or she shall forthwith notify the chief of police, giving reasons in the case of a decision under clause (1) (a) or (c).

Effect on bureau

(5) When the Commissioner notifies the chief of police of a decision to conduct the investigation, the person in charge of the bureau shall forthwith end any investigation begun by the bureau and send to the Commissioner the evidence that has been gathered and the documents relating to the complaint.

Manner of conducting investigation

(6) Section 87 applies to the Commissioner's investigation, with necessary modifications, except that the Commissioner shall send the first interim report not more than thirty days after giving notice of the decision to conduct the investigation.

Investigation of complaint made by Commissioner

89.—(1) If the complaint was made under section 78, the Commissioner shall conduct the investigation in accordance with the prescribed procedures, and section 87 does not apply.

Interim reports

(2) The Commissioner shall send the police officer and the chief of police interim reports on the investigation at monthly intervals.

Idem

(3) The first interim report shall be sent not more than thirty days after the Commissioner makes the complaint.

Exception

(4) If there are no new matters to report, the Commissioner may send the police officer and the chief of police a notice to that effect instead of an interim report.

Idem

(5) The Commissioner may withhold an interim report from the police officer if, in his or her opinion, it is desirable to do so to avoid prejudicing the investigation, but in that case shall forthwith notify the chief of police of the decision and the reasons for it.

Final report

(6) When the investigation has been completed, the Commissioner shall cause a final report to be prepared and shall send copies of it to the chief of police and the police officer.

Contents

(7) The final report shall contain,

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

(b) a summary of the investigation, including summaries of the information obtained from the police officer and any witnesses; and

(c) a description and analysis of any physical evidence obtained.

DECISION BY CHIEF OF POLICE

Review of final report

90.—(1) The chief of police shall review the final report of the investigation of a complaint and may order further investigation if he or she considers it advisable.

Results of further investigation

(2) A summary of the results of any further investigation shall be sent to the persons who received the final report, and to the Commissioner if he or she conducted the original investigation.

Decision

(3) After reviewing the final report and the results of any further investigation, the chief of police shall,

(a) decide that no further action is necessary;

(b) admonish the police officer regarding the matter in accordance with subsection 59 (1);

(c) hold a disciplinary hearing under section 60;

(d) order that all or part of the complaint be the subject of a hearing by a board of inquiry; or

(e) cause an information to be laid against the police officer and refer the matter to the Crown Attorney for prosecution.

Idem

(4) If the chief of police decides to hold a disciplinary hearing under section 60 or orders a hearing by a board of inquiry, he or she may at the same time cause an information to be laid against the police officer.

Notice

(5) The chief of police shall give written notice of the decision to the Commissioner, the complainant and the police officer, with reasons in the case of a decision that no further action is necessary or a decision to admonish the police officer.

Idem

(6) If the chief of police orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

(7) The chief of police shall give notice of the decision within six months of receiving the final report, unless the Commissioner grants an extension. Six-month time limit

(8) If the chief of police does not give notice of the decision within the six-month period and is not granted an extension, he or she shall be deemed to have decided that no further action is necessary. Deemed decision

REVIEW BY COMMISSIONER

91.—(1) The Commissioner shall review the decision of the chief of police, Review by Commissioner

(a) at the complainant's or police officer's request, in the case of a decision under section 90 to admonish the police officer;

(b) at the complainant's request, in the case of a decision under section 90 that no further action is necessary;

(c) at the complainant's request, in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(2) The Commissioner may, if in his or her opinion it is in the public interest to do so, review the decision of the chief of police, Idem

(a) in the case of a decision under section 90 to admonish the police officer;

(b) in the case of a decision under section 90 that no further action is necessary;

(c) in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(3) The Commissioner shall, at the complainant's request, review the decision made in a disciplinary hearing under section 60 arising out of a complaint. Idem

(4) The complainant or police officer may request a review by the Commissioner only within thirty days of receiving notice of the decision, unless the Commissioner grants an extension. Thirty-day limit

Complaint made by Commissioner

(5) In the case of a complaint made under section 78, the Commissioner may review,

(a) a decision by the chief of police to admonish the police officer;

(b) a decision by the chief of police that no further action is necessary;

(c) the decision made in a disciplinary hearing under section 60 arising out of the complaint.

Commissioner's decision

(6) After conducting the review, the Commissioner may decide to take no further action, or may order a hearing by a board of inquiry if he or she believes it to be necessary in the public interest.

Notice

(7) The Commissioner shall forthwith give written notice of his or her decision, with reasons in the case of a decision to take no further action, to the chief of police, the complainant and the police officer.

Idem

(8) If the Commissioner orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

HEARING BY BOARD OF INQUIRY

Police officer's appeal to board

92.—(1) If a penalty is imposed on a police officer after a disciplinary hearing under section 60 that was conducted as a result of the complaint, he or she may appeal to a board of inquiry by serving a notice of appeal on the Commissioner, the chair of the panel and the chief of police within fifteen days of receiving notice of the decision.

Notice to complainant

(2) The Commissioner shall forthwith notify the complainant of the appeal.

Extension of time for appeal

(3) A member of the panel who was appointed on a recommendation made under subsection 103 (2) may grant an extension of the time provided for serving a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Appeal to be combined with other hearing

(4) The hearing of the police officer's appeal and any hearing ordered by the Commissioner under section 91 shall be combined.

Constitution of board

93.—(1) A board of inquiry shall be constituted,

(a) when the chief of police orders under section 90 that a matter be heard by a board of inquiry;

(b) when the Commissioner orders a hearing under section 91; and

(c) when a police officer appeals under section 92.

Assignment of members to board

(2) The chair of the panel shall assign the following members of the panel to the board of inquiry, choosing members from the area where the complaint arose if possible:

1. As presiding officer, a member who was appointed on a recommendation made under subsection 103 (2).

2. A member who was appointed on a recommendation made under subsection 103 (3).

3. A member who was appointed on a recommendation made under subsection 103 (4).

Complaint against chief of police

(3) In the case of a complaint against a chief of police, the board of inquiry shall include, instead of a member of the panel who was appointed on a recommendation made under subsection 103 (3), a person, other than a police officer or a member of the Law Society of Upper Canada, appointed to the board of inquiry by the chair of the panel on the recommendation of the Ontario Association of Chiefs of Police.

New hearing, exception

94.—(1) The hearing before the board of inquiry shall be a new hearing, unless it follows a disciplinary hearing under section 60; in that case it shall be on the record, but the board may receive new or additional evidence as it considers just.

Record of disciplinary hearing

(2) If a board is constituted following a disciplinary hearing, the chief of police shall cause a record of the hearing to be prepared, at the Commissioner's expense if the Commissioner ordered the hearing before the board.

Idem

(3) The record shall include a transcript and shall be accompanied by the documents, physical evidence and exhibits considered at the disciplinary hearing.

Parties

95.—(1) The parties to a hearing are,

(a) the complainant;

(b) the police officer;

(c) the Commissioner; and

(d) the chief of police, in the case of an appeal by the police officer.

Idem

(2) The board of inquiry may add parties at any stage of the hearing on the conditions it considers proper.

Carriage

(3) In the case of a hearing ordered by the chief of police or by the Commissioner, the Commissioner has carriage of the matter and, in the case of an appeal by the police officer, the police officer has carriage.

Statement of alleged misconduct

(4) In the case of a hearing ordered by the chief of police or by the Commissioner, the chief of police or the Commissioner, as the case may be, shall provide the parties with a concise statement of the allegations of misconduct to be heard.

Notice of hearing

96.—(1) The board of inquiry shall appoint a time for the hearing and notify the parties.

Examination of evidence

(2) Before the hearing, the police officer and the complainant shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence at the hearing.

Recording of evidence

(3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Application of 1984, c. 11, s. 146

(4) Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to the hearing.

Police officer not required to give evidence

R.S.O. 1980, c. 484

(5) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements

(6) No statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Board not to communicate in relation to subject-matter of hearing

(7) The board of inquiry shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or party's counsel or representative, unless all parties receive notice and have an opportunity to participate.

Exception

(8) However, the board may seek legal advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to the parties so that they may make submissions as to the law.

Adjournment for view

(9) If it appears to be in the interests of justice, the board may direct that the board, the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Release of exhibits

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

Stay

(11) If the police officer is charged with an offence under a law of Canada or of a province or territory in connection with the misconduct or possible misconduct to which the complaint relates, the hearing shall continue unless the Crown Attorney advises the presiding officer that it should be stayed until the conclusion of the court proceedings.

Only members at hearing to participate in decision

(12) No member of the board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument; except with the parties' consent, no decision shall be given unless all the members so present participate in it.

Decision

(13) The decision of a majority of the members of the board is the board's decision.

Penalties

97.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may make submissions as to penalty and the board of inquiry may,

(a) dismiss the police officer from the police force;

(b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;

(c) demote the police officer, specifying the manner and period of the demotion;

(d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;

(e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

(f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

Calculation

(2) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day.

Idem

(3) Instead of or in addition to a penalty described in subsection (1), the board may reprimand the police officer.

Notice of decision

(4) The board shall promptly give written notice of the decision, with reasons, to the parties and the Attorney General.

Appeal to Divisional Court

98.—(1) A party to a hearing before a board of inquiry may appeal to the Divisional Court within thirty days of receiving notice of the board's decision.

Grounds for appeal

(2) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Attorney General

(3) The Attorney General is entitled to be heard, by counsel or otherwise, on the argument of the appeal.

POLICE COMPLAINTS COMMISSIONER

Appointment of Commissioner

99.—(1) The Lieutenant Governor in Council shall appoint a Police Complaints Commissioner, to hold office for a term not exceeding five years.

Reappointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding five years in each case.

Staff

R.S.O. 1980, c. 418

(3) Such employees as are considered necessary for the purposes of this Part may be appointed under the *Public Service Act*.

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received under this Part.

Monitoring handling of complaints

(6) The Commissioner shall monitor the handling of complaints by bureaus and chiefs of police.

Local offices

(7) The Commissioner may establish local offices.

Idem

(8) Anything that is given to or served upon the Commissioner under this Part may be given or served at one of the local offices.

Annual report

(9) The Commissioner shall report annually to the Attorney General.

Audit

(10) The Commissioner's accounts shall be audited annually by the Provincial Auditor.

Powers on investigation or review

100.—(1) For the purposes of an investigation under section 88 or 89 or a review under section 91, the Commissioner may, if he or she has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, enter a police station after informing the chief of police and examine there documents and things related to the complaint.

Powers on inquiry

R.S.O. 1980, c. 411

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or review as if it were an inquiry under that Act.

Appointment of person to make investigation or review

(3) The Commissioner may, in writing, appoint a person to make any investigation or review the Commissioner is authorized to make and the person has all the powers and duties of the Commissioner relating to the investigation and the review.

Identification

(4) The person shall be provided with a certificate of appointment containing his or her photograph, and while exercising any powers or performing any duties in respect of the investigation or review shall produce the certificate of appointment upon request.

Report

(5) The person shall report the results of the investigation or review to the Commissioner.

Obstruction

(6) No person shall obstruct the Commissioner or a person appointed under subsection (3) or withhold from the Commissioner or person or conceal or destroy any documents or things related to the investigation or review.

Search warrant

(7) If a justice of the peace is satisfied, on an application made without notice by the Commissioner or a person appointed under subsection (3), that there are reasonable grounds to believe that there are in any place documents or things relating to an investigation or review, the justice of the peace may make an order authorizing the applicant, together with such persons as he or she calls on for assistance, to enter

the place, by force if necessary, search for the documents or things and examine them.

Entry and search at night restricted

(8) The entry and search shall not be made between the hours of 9 p.m. and 6 a.m. unless the order so authorizes.

Removal of books, etc.

(9) The Commissioner may, upon giving a receipt, remove any documents or things examined under subsection (1) or (7) relating to the investigation or review, shall cause them to be copied with reasonable dispatch and shall then return them promptly to the person from whom they were removed.

Admissibility of copies

(10) A copy made as provided in subsection (9) and certified to be a true copy by the Commissioner is admissible in evidence in any proceeding and is proof, in the absence of evidence to the contrary, of the original document and its contents.

Appointment of expert

(11) The Commissioner may appoint an expert to examine documents or things examined under subsection (1) or (7).

Recommendations concerning police practices or procedures

101.—(1) The Commissioner may make recommendations with respect to the practices or procedures of a police force by sending the recommendations, with any supporting documents, to,

(a) the Attorney General;

(b) the Solicitor General;

(c) the chief of police;

(d) the association, if any; and

(e) the police services board, in the case of a municipal police force.

Comments

(2) Within ninety days of receiving the recommendations, the chief of police, association and police services board shall send their comments to the Attorney General, the Solicitor General and the Commissioner.

Judicial review of Commissioner's decisions

102. The Commissioner's decisions under subsection 83 (5) (complaint to continue to be dealt with despite informal resolution), subsection 84 (6) (complaint to continue to be dealt with despite withdrawal) and clause 88 (1) (c) (decision to conduct investigation because of undue delay) shall be deemed to be made in the exercise of a statutory power of decision.

BOARDS OF INQUIRY

Panel for boards of inquiry

103.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry to conduct hearings in connection with complaints.

Recommendations for appointment

(2) One-third of the members of the panel shall be members of the Law Society of Upper Canada who are recommended for appointment by the Attorney General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Police Association of Ontario.

Idem

(4) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Association of Municipalities of Ontario.

Failure to make recommendations

(5) The Attorney General may make the recommendations under subsection (3) or (4) if the Police Association of Ontario or the Association of Municipalities of Ontario, as the case may be, do not submit written recommendations to the Attorney General within the time that he or she specifies.

Term

(6) Appointments to the panel shall be for a term not exceeding three years and a member may be reappointed for a further term or terms.

Continuance in office for uncompleted assignments

(7) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board to which he or she was assigned before the expiration of the term.

Remuneration

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Chair

(9) The Lieutenant Governor in Council shall appoint a person to be the chair of the panel.

Annual summary of decisions

(10) The chair shall cause to be prepared and published an annual summary of the decisions of boards, with reasons.

GENERAL MATTERS

Police officer's employment record

104. No reference to a complaint, a hearing held under this Part or a disciplinary hearing conducted under section 60 as a result of the complaint shall be made in the police offi-

cer's employment record, and the matter shall not be taken into account for any purpose related to his or her employment, unless,

(a) the police officer is convicted of an offence in connection with the incident;

(b) misconduct is proved on clear and convincing evidence at a hearing held under this Part or at a disciplinary hearing;

(c) the chief of police admonishes the police officer in connection with the incident, in accordance with subsection 59 (1);

(d) the police officer admits misconduct in the course of attempts to resolve the complaint informally; or

(e) the police officer resigns before the complaint is finally disposed of.

Resignation after hearing ordered

105.—(1) This section applies to a police officer who resigns from the police force after a hearing is ordered under section 90 or 91.

Idem

(2) If the police officer resigns before a board of inquiry is constituted under section 93, the following rules apply:

1. No board of inquiry shall be constituted unless the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force.

2. In that case, the board acquires jurisdiction over the police officer despite the earlier resignation.

Idem

(3) If the police officer resigns after a board of inquiry is constituted, the following rules apply:

1. The board of inquiry loses jurisdiction over the police officer.

2. If the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force, the board's jurisdiction is revived.

Notice

106.—(1) A notice or other document required to be given or sent under this Part is sufficiently given if delivered

personally or sent by prepaid registered mail addressed to the person.

Notice by mail

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Delegation by chief of police

107.—(1) The chief of police may authorize any police officer of the rank of inspector or higher (from another police force if there is none in the chief's own police force) to exercise any power or perform any duty of the chief of police referred to in this Part.

Delegation by Commissioner

(2) The Commissioner may authorize any member of his or her staff to exercise any power or perform any duty of the Commissioner referred to in this Part.

Application of section

108.—(1) This section applies to every person engaged in the administration of this Part, including a member of a police force.

Confidentiality, exceptions

1987, c. 25

(2) A person shall preserve secrecy in respect of all information obtained in the course of his or her duties and not contained in a record as defined in the *Freedom of Information and Protection of Privacy Act, 1987,* and shall not communicate such information to any other person except,

(a) in accordance with subsection (3);

(b) as may be required for law enforcement purposes; or

(c) with the consent of the person, if any, to whom the information relates.

Permitted disclosure

(3) A person may communicate information obtained in the course of his or her duties,

(a) as may be required in connection with the administration of this Act and the regulations; or

(b) to his or her counsel.

Non-compellability

(4) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Inadmissibility of documents

(5) No document prepared under this Part as the result of a complaint and no statement referred to in subsection 96 (6) (statements made during attempt at informal resolution) is admissible in a civil proceeding, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Non-application of R.S.O. 1980, c. 325

109. The *Ombudsman Act* does not apply to anything done under this Part.

Agreement for contributions

110. The Attorney General may, with the approval of the Lieutenant Governor in Council, enter into an agreement with a municipality providing for its payment to the Treasurer of Ontario, on such conditions as may be agreed upon, of contributions in respect of the amounts required for the purposes of this Part.

Offence

111. A person who contravenes subsection 96 (4) (photography at hearing), 100 (6) (obstructing Commissioner) or 108 (2) (confidentiality) is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Definition

1984, c. 63

112.—(1) In subsection (2), "former Act" means the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Transition, complaints under former Act

(2) Despite the repeal of the former Act by subsection 148 (1), complaints made under the former Act before the day this Act comes into force shall be dealt with in accordance with the former Act, except that hearings before boards of inquiry that are constituted after the day this Act comes into force shall be conducted in accordance with this Part.

PART VII

Special Investigations

Special investigations unit

113.—(1) There shall be a special investigations unit of the Ministry of the Solicitor General.

Composition

(2) The unit shall consist of a director appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General and investigators appointed under the *Public Service Act*.

R.S.O. 1980, c. 418

Idem

(3) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators.

Peace officers

(4) The director and investigators are peace officers.

(5) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers. Investigations

(6) An investigator shall not participate in an investigation that relates to members of a police force of which he or she was a member. Restriction

(7) If there are reasonable grounds to do so in his or her opinion, the director shall cause informations to be laid against police officers in connection with the matters investigated and shall refer them to the Crown Attorney for prosecution. Charges

(8) The director shall report the results of investigations to the Attorney General. Report

(9) Members of police forces shall co-operate fully with the members of the unit in the conduct of investigations. Co-operation of police forces

PART VIII

Labour Relations

114. In this Part, Definitions

"Arbitration Commission" means the Ontario Police Arbitration Commission continued by subsection 131 (1);

"senior officer" means a member of a police force who has the rank of inspector or higher or is employed in a supervisory or confidential capacity.

115.—(1) This Part, except section 117, does not apply to the Ontario Provincial Police. Exclusion of O.P.P.

(2) The working conditions and remuneration of the chief of police and deputy chief of police of a police force shall be determined under clause 31 (1) (d) (responsibilities of board) and not under this Part. Exclusion of chief of police and deputy

116.—(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter. Hearing re person's status

(2) The Commission's decision is final. Decision final

Membership in trade union prohibited, exception

117. A member of a police force shall not become or remain a member of a trade union or of an organization that is affiliated directly or indirectly with a trade union, unless the membership is required for secondary activities that do not contravene section 49 and the chief of police consents.

Categories

118.—(1) If a majority of the members of a police force, or an association that is entitled to give notices of desire to bargain, assigns the members of the police force to different categories for the purposes of this Part, bargaining, conciliation and arbitration shall be carried on as if each category were a separate police force.

Senior officers

(2) If at least 50 per cent of the senior officers of a police force belong to an association composed only of senior officers, bargaining, conciliation and arbitration shall be carried on as if the senior officers were a separate police force.

Restriction

(3) Bargaining, conciliation and arbitration may be carried on with more than two categories within a police force (apart from senior officers) only if the Commission has approved the creation of the categories.

Notice of desire to bargain

119.—(1) If no agreement exists or at any time after ninety days before an agreement would expire but for subsection 129 (1) or (2), a majority of the members of a police force may give the board notice in writing of their desire to bargain with a view to making an agreement, renewing the existing agreement, with or without modifications, or making a new agreement.

Bargaining

(2) Within fifteen days after the notice of desire to bargain is given or within the longer period that the parties agree upon, the board shall meet with a bargaining committee of the members of the police force.

Idem

(3) The parties shall bargain in good faith and make every reasonable effort to come to an agreement dealing with the remuneration, pensions, sick leave credit gratuities and grievance procedures of the members of the police force and, subject to section 126, their working conditions.

Filing of agreement

(4) The board shall promptly file a copy of any agreement with the Arbitration Commission.

Association

(5) If at least 50 per cent of the members of the police force belong to an association, it shall give the notice of desire to bargain.

Pension plans under R.S.O.1980, c. 302

(6) If the notice of desire to bargain involves pensions under a pension plan established or to be established under the *Municipal Act*, it shall also be given to the Minister of Municipal Affairs, who may determine the maximum pension benefits that may be included in any agreement or award with respect to the pension plan.

Bargaining committee

120.—(1) The members of the bargaining committee shall be members of the police force.

Counsel and advisors

(2) One legal counsel and one other advisor for each of the bargaining committee and the board may participate in the bargaining sessions.

Police organization

(3) If the notice of desire to bargain is given by an association that is affiliated with a police organization, or if at least 50 per cent of the members of the police force belong to a police organization, a member of the organization may attend the parties' bargaining sessions in an advisory capacity.

Chief of police

(4) The chief of police or, if the parties consent, another person designated by the chief of police may also attend the parties' bargaining sessions in an advisory capacity.

Appointment of conciliation officer

121.—(1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a notice of desire to bargain has been given.

Duty of conciliation officer

(2) The conciliation officer shall confer with the parties and endeavour to effect an agreement and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(3) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that an agreement may be made within a reasonable time if the period is extended.

Report

(4) When the conciliation officer reports to the Solicitor General that an agreement has been reached or that an agreement cannot be reached, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(5) Neither party shall give a notice requiring matters in dispute to be referred for arbitration under section 122 until the Solicitor General has informed the parties of the conciliation officer's report or informed them that he or she does not consider the case appropriate for the appointment of a conciliation officer.

Arbitration

122.—(1) If matters remain in dispute after bargaining under section 119 and conciliation, if any, under section 121, a party may give the Solicitor General and the other party a written notice referring the matters to arbitration.

Composition of arbitration board

(2) The following rules apply to the composition of the arbitration board:

1. The parties shall determine whether it shall consist of one person or of three persons. If they are unable to agree on this matter, or if they agree that the arbitration board shall consist of three persons but one of the parties then fails to appoint a person in accordance with the agreement, the arbitration board shall consist of one person.

2. If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the Solicitor General.

3. If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the Solicitor General.

Time for arbitration

(3) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver its decision or award within sixty days after commencing the arbitration.

Representations by council

(4) The municipal council may make representations before the arbitration board if it is authorized to do so by a resolution.

Criteria

(5) In making an award, the arbitration board shall take into account the interest and welfare of the community served by the police force as well as any local factors affecting the community.

Filing of award

(6) The arbitration board shall promptly file a copy of its decision or award with the Arbitration Commission.

Costs and expenses

(7) The following rules apply with respect to the costs and expenses of the arbitration:

1. The Arbitration Commission shall pay the fees of any person the Solicitor General appoints to the arbitration board.

2. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

3. The parties shall share equally the costs and expenses for matters shared in common, including the fees of any person whom they jointly appoint to the arbitration board.

Dispute, appointment of conciliation officer

123.—(1) The Solicitor General shall appoint a conciliation officer, at a party's request, if a difference arises between the parties concerning an agreement or an arbitrator's decision or award made under this Part, or if it is alleged that an agreement or award has been violated.

Duty of conciliation officer

(2) The conciliation officer shall confer with the parties and endeavour to resolve the dispute and shall, within fourteen days after being appointed, make a written report of the results to the Solicitor General.

Extension of time

(3) The fourteen-day period may be extended if the parties agree or if the Solicitor General extends it on the advice of the conciliation officer that the dispute may be resolved within a reasonable time if the period is extended.

Report

(4) When the conciliation officer reports to the Solicitor General that the dispute has been resolved or that it cannot be resolved by conciliation, the Solicitor General shall promptly inform the parties of the report.

No arbitration during conciliation

(5) Neither party shall give a notice referring the dispute for arbitration until the Solicitor General has informed the parties of the conciliation officer's report.

Arbitration after conciliation fails

124.—(1) If the conciliation officer reports that the dispute cannot be resolved by conciliation, either party may give the Solicitor General and the other party a written notice referring the dispute to arbitration.

Idem

(2) The procedure provided by subsection (1) is available in addition to any grievance or arbitration procedure provided by the agreement, decision or award.

Composition of arbitration board

(3) The following rules apply to the composition of the arbitration board:

1. The parties shall determine whether it shall consist of one person or of three persons. If they are unable to agree on this matter, or if they agree that the arbitration board shall consist of three persons but one of the parties then fails to appoint a person in accordance with the agreement, the arbitration board shall consist of one person.

2. If the arbitration board is to consist of one person, the parties shall appoint him or her jointly. If they are unable to agree on a joint appointment, the person shall be appointed by the Solicitor General.

3. If the arbitration board is to consist of three persons, the parties shall each appoint one person and shall jointly appoint a chair. If they are unable to agree on a joint appointment, the chair shall be appointed by the Solicitor General.

Time for arbitration

(4) The arbitration board shall commence the arbitration within thirty days after being appointed, in the case of a one-person board, or within thirty days after the appointment of the chair, in the case of a three-person board, and shall deliver a decision within a reasonable time.

Filing of decision

(5) The arbitration board shall promptly file a copy of its decision with the Arbitration Commission.

Costs and expenses

(6) The following rules apply with respect to the costs and expenses of the arbitration:

1. The Arbitration Commission shall pay the fees of any person the Solicitor General appoints to the arbitration board.

2. Each party shall pay its own costs incurred in the arbitration, including the fees of any person it appoints to the arbitration board.

3. The parties shall share equally the costs and expenses for matters shared in common, including the fees of any person whom they jointly appoint to the arbitration board.

Enforcement

(7) After the day that is thirty days after the delivery of the decision or after the day that the decision provides for compliance, whichever is later, the arbitration board may, of its own motion, and shall, at a party's request, file a copy of the decision, in the prescribed form, in the office of the Registrar of the Supreme Court.

(8) The decision shall be entered in the same way as a judgment of the Supreme Court and may be enforced as such. Idem

125. The parties may agree to extend any period of time mentioned in this Part. Extension of time

126. Agreements and awards made under this Part do not affect the working conditions of the members of the police force in so far as those working conditions are determined by sections 42 to 49, subsection 50 (3) and Parts V, VI and VII of this Act and by the regulations. Restriction

127. The *Arbitrations Act* does not apply to arbitrations conducted under this Part. Non-application of R.S.O. 1980, c. 25

128. Agreements, decisions and awards made under this Part bind the board and the members of the police force. Agreements, decisions and awards binding

129.—(1) Agreements, decisions and awards remain in effect until the end of the year in which they come into effect and thereafter continue in effect until replaced. Duration of agreements, decisions and awards

(2) The parties to an agreement may provide that the agreement and any decisions or awards made with respect to it shall remain in effect until the end of the year following the year in which they come into effect and thereafter shall continue in effect until replaced. Longer duration if parties agree

130.—(1) If, when the council is adopting its annual estimates, a notice of desire to bargain has been given but there is not yet an agreement, decision or award, the council shall make such provision for the payment of expenditures that will result from the expected agreement, decision or award as it considers adequate. Provision for expenditures

(2) An agreement, decision or award comes into effect on the first day of the fiscal period in respect of which the municipal council may make provision for it in its estimates, whether that day is before or after the agreement, decision or award is made. Coming into effect

(3) A provision of the agreement, decision or award that does not involve municipal expenditures may come into effect earlier than the day referred to in subsection (2). Exception

131.—(1) The commission known as the Ontario Police Arbitration Commission is continued. Arbitration Commission continued

Composition

(2) The Arbitration Commission shall be composed of the following members, appointed by the Lieutenant Governor in Council:

1. Two representatives of boards, recommended for appointment by the Municipal Police Authorities.

2. Two representatives of members of associations, recommended for appointment by the Police Association of Ontario.

3. A chair.

Terms of office

(3) The representatives of boards and members of associations shall hold office for two-year terms and may be reappointed; the chair shall hold office during pleasure.

Staff

R.S.O. 1980, c. 418

(4) Such employees as are necessary for the proper conduct of the Arbitration Commission's work may be appointed under the *Public Service Act*.

Responsibilities of Arbitration Commission

(5) The Arbitration Commission has the following responsibilities:

1. Maintaining a register of arbitrators who are available for appointment.

2. Assisting arbitrators by making administrative arrangements in connection with arbitrations.

3. Fixing the fees of arbitrators appointed by the Solicitor General under section 124.

4. Sponsoring the publication and distribution of information about agreements, arbitrations and awards.

5. Sponsoring research on the subject of agreements, arbitrations and awards.

6. Maintaining a file of agreements, decisions and awards made under this Part.

Regulations

(6) Subject to the approval of the Lieutenant Governor in Council, the Arbitration Commission may make regulations,

(a) governing the conduct of arbitrations and prescribing procedures for them;

(b) prescribing forms and providing for their use.

Transition

(7) The persons who are members of the Arbitration Commission on the day this Act comes into force shall continue to hold office until their terms expire, and may be reappointed in accordance with subsection (2).

PART IX

Regulations and Miscellaneous

Property in possession of police force

132.—(1) This section applies to personal property of all kinds, except firearms and money, that comes into the possession of a police force under either of the following circumstances:

1. The property was stolen from its owner or was found abandoned in a public place, and the chief of police is unable to determine who owns it.

2. The property was seized by a member of the police force in the lawful execution of his or her duties, all legal proceedings in respect of the property have been completed, there is no court order for its disposition and there is no legal requirement, apart from this section, that it be retained or disposed of.

Sale

(2) The chief of police may cause the property to be sold, and the board may use the proceeds for any purpose that it considers in the public interest.

Perishable property

(3) If the property is perishable, it may be sold at any time without notice.

Non-perishable property

(4) If the property is not perishable, the following rules apply to its sale:

1. The property may be sold when it has been in the possession of the police force for at least one month, in the case of a motor vehicle as defined in the *Highway Traffic Act* or a bicycle, or for at least three months, in the case of other property.

R.S.O. 1980, c. 198

2. The sale shall be by public auction.

3. At least ten days notice of the time and place of the public auction shall be given by publication in a newspaper of general circulation in the municipality.

4. The sale may be adjourned, repeatedly if necessary, until the property is sold.

Claim of owner of property

(5) If a motor vehicle, bicycle or other property has been sold before it has been in the possession of the police force for three months and if the owner makes a claim before that time, the owner is entitled to receive the proceeds, less the costs of storage, advertising and sale.

Register of property

(6) The chief of police shall ensure that the police force keeps a register of property and that the following rules are followed:

1. The description and location of every item of property shall be recorded.

2. If the property is sold, full particulars shall be recorded.

3. If the property is returned to its owner, his or her name, address and telephone number shall be recorded.

Exception

R.S.O. 1980, c. 198

(7) This section does not apply to a motor vehicle that is impounded under section 192 of the *Highway Traffic Act*.

Money

133.—(1) This section applies to money that comes into the possession of a police force under the circumstances described in paragraph 1 or 2 of subsection 132 (1).

Accounting

(2) The money shall be accounted for according to the prescribed method.

Use of money

(3) If three months have elapsed after the day the money came into the possession of the police force and the owner has not claimed it, the board may use it for any purpose that it considers in the public interest.

Firearms

134.—(1) This section applies to firearms that are in the possession of a police force because they have been found, turned in or seized.

Safe-keeping, return to owner

(2) The chief of police shall ensure that firearms are securely stored, and that they are returned to their owners if there is a court order or other legal requirement to that effect.

Destruction

(3) If all possible court proceedings relating to a firearm have been completed or the time for them has expired and there is no court order or other legal requirement governing how the firearm is to be dealt with, the chief of police shall ensure that it is destroyed promptly, unless subsection (4) applies.

(4) If the chief of police considers the firearm unique, an antique, or of educational or historical value, he or she shall notify the Director of the Centre of Forensic Sciences. Firearm of special interest

(5) If the Director indicates, within three months of receiving notice, that the firearm is required for the Centre's collection, the chief of police shall ensure that it is transferred there. Idem

(6) If the Director indicates that the firearm is not required for the Centre's collection or fails to respond within three months of receiving notice, the chief of police shall ensure that the firearm is destroyed promptly. Idem

(7) The chief of police may dispose of a firearm to which subsection (6) applies otherwise than by having it destroyed if he or she first obtains the Solicitor General's approval of the method of disposal. Disposal otherwise than by destruction

(8) The chief of police shall ensure that the police force keeps a register of firearms and that the following rules are followed: Register of firearms

1. Every firearm's description and location shall be recorded.

2. When a firearm ceases to be in the possession of the board or of a member of the police force, full particulars shall be recorded, including the name of the person who disposed of it and the date and method of disposal.

3. If the firearm is returned to its owner, his or her name, address and telephone number shall also be recorded.

4. On or before the 31st day of January in each year, a statement shall be filed with the Commission listing the firearms that have come into the possession of the police force during the preceding calendar year, indicating which firearms are still being retained and which have been disposed of, and giving the particulars of disposition.

135.—(1) The Lieutenant Governor in Council may make regulations, Regulations

1. prescribing standards for police services;

2. prescribing procedures for the inspection and review by the Solicitor General of police forces;

3. requiring municipalities to provide police detention facilities, governing those facilities and providing for their inspection;

4. providing for financial aid to police training schools;

5. prescribing the minimum amount of remuneration to be paid by municipalities to the members of boards who are appointed by the Lieutenant Governor in Council or Solicitor General;

6. prescribing the procedures to be followed by boards and the places at which their meetings shall be held;

7. prescribing the forms of oaths or affirmations of office and secrecy for the purposes of section 32 (members of boards), section 45 (police officers), subsection 52 (6) (auxiliary members of police forces), subsection 53 (9) (special constables) and subsection 54 (8) (First Nations Constables);

8. respecting the government, operation and administration of police forces;

9. governing the qualifications for the appointment of persons to police forces and for their promotion;

10. prescribing groups of persons for the purposes of subsection 48 (1) (employment equity plans);

11. prescribing matters to be contained in employment equity plans;

12. respecting the political activities in which municipal police officers are permitted to engage;

13. establishing the ranks that shall be held by members of municipal police forces;

14. prescribing the minimum salary or other remuneration and allowances to be paid to members of municipal police forces;

15. regulating or prohibiting the use of any equipment by a police force or any of its members;

16. regulating the use of force by members of police forces;

17. prescribing standards of dress for police officers on duty and prescribing requirements respecting police uniforms;

18. prescribing courses of training for members of police forces and prescribing standards in that connection;

19. governing the conduct, duties, suspension and dismissal of members of police forces;

20. describing the circumstances under which members of police forces are permitted and not permitted to pursue persons by means of motor vehicles, and prescribing procedures that shall be followed when a person is pursued in that manner;

21. prescribing the records, returns, books and accounts to be kept by police forces and their members;

22. prescribing the method of accounting for fees and costs that come into the hands of members of police forces;

23. prescribing a code of conduct in which offences constituting misconduct are described for the purposes of section 56;

24. providing for the payment of fees and expenses to witnesses at hearings conducted under Part V or VI;

25. prescribing procedures for the investigation of complaints under Part VI;

26. assigning further duties to the Police Complaints Commissioner;

27. prescribing the method of accounting for money to which section 133 applies;

28. prescribing forms and providing for their use;

29. prescribing any matter that this Act requires to be prescribed or refers to as being prescribed;

30. respecting any matter that is necessary or advisable to implement this Act effectively.

Idem

(2) A regulation made under subsection (1) may be general or particular in its application.

Crown bound

136. This Act binds the Crown in right of Ontario.

PART X

CONSEQUENTIAL AMENDMENTS AND REPEALS

137. Section 66 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Non-application of 1990, c. 10

66.—(1) The *Police Services Act, 1990*, being chapter 10, except section 15 (municipal by-law enforcement officers), does not apply to the District Corporation or to an area municipality.

Non-application of R.S.O. 1980, c. 302, ss. 202, 203

(2) Sections 202 and 203 of the *Municipal Act* do not apply to an area municipality.

138.—(1) Section 174 of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

174. In this Part, "Metropolitan Board" means The Municipality of Metropolitan Toronto Police Services Board.

(2) Subsections 175 (1) and (2) of the said Act are repealed.

(3) Subsection 177 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10 and amended by 1988, chapter 12, section 1, is repealed and the following substituted therefor:

Composition of Metropolitan Board 1990, c. 10

(1) The Metropolitan Council shall be deemed to have applied to the Lieutenant Governor in Council for an increase in the size of its board under subsection 27 (9) of the *Police Services Act, 1990* and the Lieutenant Governor in Council shall be deemed to have approved the application.

(4) Section 178 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 10, is repealed.

139.—(1) Section 73 of the *Regional Municipality of Durham Act*, being chapter 434 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

73. In this Part, "Durham Police Board" means The Regional Municipality of Durham Police Services Board. Definition

(2) Section 74 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 1, is repealed.

(3) Subsection 75 (1) of the said Act is repealed and the following substituted therefor:

(1) The Durham Police Board and the members of the Durham Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

140.—(1) Section 68 of the *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

68. In this Part, "Haldimand-Norfolk Police Board" means The Regional Municipality of Haldimand-Norfolk Police Services Board. Definition

(2) Section 69 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 2, is repealed.

(3) Subsections 70 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

(1) The Haldimand-Norfolk Police Board and the members of the Haldimand-Norfolk Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

(2) Despite subsection 31 (1) of the *Police Services Act, 1990*, the Haldimand-Norfolk Police Board is responsible for providing police services only for those portions of the Regional Area in which a local municipality maintained a police force on the 31st day of March, 1974. Jurisdiction 1990, c. 10

(3) With the Solicitor General's approval, the Haldimand-Norfolk Police Board may assume responsibility for providing police services for additional portions of the Regional Area. Idem

141.—(1) Section 79 of the *Regional Municipality of Halton Act*, being chapter 436 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

79. In this Part, "Halton Police Board" means The Regional Municipality of Halton Police Services Board.

(2) Section 80 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 3, is repealed.

(3) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Halton Police Board and the members of the Halton Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

142.—(1) Section 90 of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

90. In this Part, "Hamilton-Wentworth Police Board" means The Regional Municipality of Hamilton-Wentworth Police Services Board.

(2) Section 91 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 4, is repealed.

(3) Subsection 92 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Hamilton-Wentworth Police Board and the members of the Hamilton-Wentworth Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

143.—(1) Section 116 of the *Regional Municipality of Niagara Act*, being chapter 438 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

116. In this Part, "Niagara Police Board" means The Regional Municipality of Niagara Police Services Board.

(2) Section 117 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 5, is repealed.

(3) Subsection 118 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Niagara Police Board and the members of the Niagara Regional Police Force have the same duties with

respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

144.—(1) Section 74 of the *Regional Municipality of Peel Act*, being chapter 440 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

74. In this Part, "Peel Police Board" means The Regional Municipality of Peel Police Services Board. Definition

(2) Section 75 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 6, is repealed.

(3) Subsection 76 (1) of the said Act is repealed and the following substituted therefor:

(1) The Peel Police Board and the members of the Peel Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

145.—(1) Section 38 of the *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

38. In this Part, "Sudbury Police Board" means The Regional Municipality of Sudbury Police Services Board. Definition

(2) Section 39 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 57, section 7, is repealed.

(3) Subsection 40 (1) of the said Act is repealed and the following substituted therefor:

(1) The Sudbury Police Board and the members of the Sudbury Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation. By-law enforcement

146.—(1) Section 109 of the *Regional Municipality of Waterloo Act*, being chapter 442 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

109. In this Part, "Waterloo Police Board" means The Regional Municipality of Waterloo Police Services Board. Definition

(2) Section 110 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 8, is repealed.

(3) Subsection 111 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The Waterloo Police Board and the members of the Waterloo Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

147.—(1) Section 111 of the *Regional Municipality of York Act*, being chapter 443 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Definition

111. In this Part, "York Police Board" means The Regional Municipality of York Police Services Board.

(2) Section 112 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 56, section 9, is repealed.

(3) Subsection 113 (1) of the said Act is repealed and the following substituted therefor:

By-law enforcement

(1) The York Police Board and the members of the York Regional Police Force have the same duties with respect to by-laws of the area municipalities as with respect to by-laws of the Regional Corporation.

148.—(1) The following are repealed:

1. **The *Police Act*, being chapter 381 of the Revised Statutes of Ontario, 1980, except section 57a, as enacted by the Statutes of Ontario, 1989, chapter 24, section 1.**

2. **The *Police Amendment Act, 1981*, being chapter 55.**

3. **The *Police Amendment Act, 1983*, being chapter 57.**

4. **Section 201 of the *Courts of Justice Act, 1984*, being chapter 11.**

5. **Section 53 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.**

6. **The *Metropolitan Toronto Police Force Complaints Act, 1984*, being chapter 63.**

7. **The *Metropolitan Toronto Police Force Complaints Amendment Act, 1986*, being chapter 31.**

(2) The title of the *Police Act* is repealed and the following substituted therefor:

COURT SECURITY ACT

(3) Section 57a of the *Court Security Act* is amended by striking out "or council" in the first line.

149. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

150. The short title of this Act is the *Police Services Act, 1990*. Short title

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 108

An Act respecting Business Names

The Hon. G. Sorbara
Minister of Consumer and Commercial Relations



1st Reading December 20th, 1989
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

The purpose of the Bill is to provide for the registration of names used by businesses. The main thrust of the Bill is to ensure that every business operating in Ontario that uses a name other than its corporate name, in the case of a corporation, or the name of its owners, in the case of individuals, is registered.

Section 7 provides for the loss of the ability to sue by a person who contravenes specified provisions and section 10 provides for penalties for contravention of specified provisions.

The *Partnerships Registration Act* is repealed and parts of the *Corporations Information Act* and the *Limited Partnerships Act* are amended.

Bill 108 1989

An Act respecting Business Names

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"business" includes every trade, occupation, profession, service or venture carried on with a view to profit;

"corporation" means a corporation wherever or however incorporated;

"Minister" means the Minister of Consumer and Commercial Relations;

"Ministry" means the Ministry of the Minister;

"person" includes an individual, sole proprietorship, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and an individual in his or her capacity as trustee, executor, administrator or other legal representative;

"prescribed" means prescribed by the regulations;

"Registrar" means the Registrar appointed under section 3;

"registered" means registered under this Act;

"regulations" means the regulations made under this Act.

Registering name

2.—(1) No corporation shall carry on business or identify itself to the public under a name other than its corporate name unless the name is registered by that corporation.

Idem

(2) No individual shall carry on business or identify his or her business to the public under a name other than his or her own name unless the name is registered by that individual.

Idem

(3) No persons associated in partnership shall carry on business or identify themselves to the public, except as a limited partnership carrying on business in accordance with the *Limited Partnerships Act*, unless the name of the partnership is registered by all of the partners.

R.S.O. 1980, c. 241

Exception

(4) Subsection (3) does not apply to prohibit persons associated in partnership from carrying on business or identifying themselves to the public under a name that is composed of the names of the partners.

Idem

(5) This section does not apply to prohibit use of a name that is a translation into a language other than English or French of a registered name if the translated name is used in conjunction with the registered name.

Name to be set out

(6) A person carrying on business under a registered name or, in the case of a corporation, identifying itself to the public under a registered name shall set out his, her or its name in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by the person.

Registrar

3.—(1) The Minister shall appoint a public servant in the Ministry as the Registrar.

Delegation of powers

(2) The Registrar may delegate any of the duties or powers of the Registrar to any public servant in the Ministry.

Records

(3) The Registrar shall maintain a record of every registration made under this Act or filed under the *Limited Partnerships Act*.

Available to the public

(4) Any person is entitled to examine, during normal business hours, the records maintained by the Registrar.

Registration

4.—(1) Subject to subsections (2) and (3), any person, upon paying the prescribed fee, may register a name under this Act for a term of five years.

Idem

(2) The Registrar shall not accept for registration a name that does not comply with the prescribed requirements.

Idem

(3) A name may be registered only in English, French, English and French or English and French combined.

Changes

(4) If there is a change in information set out in a registration, the registrant shall register, in the prescribed form within fifteen days after the change, an amended registration showing the change.

Correcting information

(5) If the Registrar has grounds to believe that information registered is not correct or current, he or she may give notice to the registrant requiring that the information be corrected or updated within the time specified in the notice.

Idem

(6) A registrant receiving a notice under subsection (5) shall comply with the request in the notice or provide evidence to the Registrar that the information registered is correct or current, as the case may be.

Cancelling registration

(7) The Registrar shall cancel a registration,

(a) if a name was accepted for registration that does not comply with the prescribed requirements; or

(b) if the registrant requests the cancellation.

Idem

(8) The Registrar may cancel a registration if the registrant is given a notice under subsection (5) and does not comply with subsection (6).

Entering cancellation

(9) The Registrar shall indicate, on the record, every cancellation under subsection (7) or (8).

Notice of cancellation

(10) Before cancelling a registration other than on the request of the registrant or pursuant to a Court order, the Registrar shall give the registrant twenty-one days notice of the intention to cancel.

Appeal

(11) A person whose application to register a name is refused may appeal to the Divisional Court within twenty-one days after the day of the refusal.

Idem

(12) A registrant who receives a notice under subsection (10) may appeal to the Divisional Court within twenty-one days after receipt of the notice.

Idem

(13) If a notice under subsection (10) is under appeal, the Registrar shall not cancel the registration unless a final determination is made upholding the Registrar's decision.

Renewal of registration

5.—(1) A registrant is entitled to renew a registration before it expires upon paying the prescribed fee.

Late renewal

(2) A registrant is entitled to renew a registration within sixty days after it expires upon paying the prescribed fee for late renewal.

Effective date

(3) A renewal made under subsection (1) or (2) is effective on the day immediately following the expiration day of the registration being renewed.

Liability for damages

6.—(1) A person who suffers damages by reason of the registration of a name that is the same as or deceptively similar to the person's registered name is entitled to recover compensation from the registrant for damages suffered because of the registration.

Idem

(2) For the purposes of subsection (1), the compensation is limited to the greater of $500 and the actual amount of damages incurred.

Cancelling registration

(3) In giving a judgment for a plaintiff in an action brought under subsection (1), the court shall order the Registrar to cancel the registration that was the cause of the action.

Ability to sue

7.—(1) A person carrying on business in contravention of subsection 2 (1), (2) or (3) or subsection 4 (4) or (6) is not capable of maintaining a proceeding in a court in Ontario in connection with that business except with leave of the court.

Idem

(2) The court shall grant leave if the person seeking to maintain the proceeding satisfies the court that,

(a) the failure to register was inadvertent;

(b) there is no evidence that the public has been deceived or misled; and

(c) at the time of the application to the court, the person is not in contravention of this Act or the regulations.

Contracts valid

(3) No contract is void or voidable by reason only that it was entered into by a person who was in contravention of this Act or the regulations at the time the contract was made.

Certified copies

8.—(1) Upon payment of the prescribed fee, the Registrar shall issue to any person applying therefor,

(a) a certified copy of the record with respect to any name registered; or

(b) if a name is not registered, a certificate so stating.

Idem

(2) A certified copy or a certificate issued under this section is admissible in evidence in all courts as proof, in the absence of evidence to the contrary, of the contents of the document

or of the non-registration of a name, as the case may be, without proof of the appointment or signature of the Registrar.

Idem

(3) For the purpose of this section, the signature of the Registrar may be printed or otherwise mechanically or electronically reproduced.

Form of records

9.—(1) Records prepared and maintained by the Registrar may be in bound or loose-leaf form or in a photographic film form or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

Idem

(2) If records maintained by the Registrar are prepared and maintained otherwise than in written form, the Registrar shall furnish any copy required to be furnished in intelligible written form.

Idem

(3) A report reproduced from records prepared and maintained otherwise than in written form that purports to be certified by the Registrar is, without proof of the Registrar's office or signature, admissible in evidence to the same extent as the original written records would have been.

Copies

(4) The Registrar is not required to produce the original of a document if a copy is furnished in compliance with subsection (2).

Idem

(5) For the purpose of this section, a document is a copy of an original if it contains all the information contained in the original.

Offence

10.—(1) Every person who, without reasonable cause, contravenes section 2 or subsection 4 (4) or (6) or submits a statement in an application for a registration under this Act that is false or misleading with respect to any material fact is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or, if the person is a corporation, to a fine of not more than $25,000.

Idem

(2) If a corporation is guilty of an offence under subsection (1), every director or officer of the corporation and every person acting as its representative in Ontario who authorized, permitted or acquiesced in such an offence is also guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Regulations

11. The Lieutenant Governor in Council may make regulations,

(a) prescribing information to be contained in a registration;

(b) prescribing the duties of the Registrar;

(c) requiring the payment of fees and fees for late registration and prescribing the amounts thereof;

(d) prescribing forms and providing for their use;

(e) exempting any class of person or business from the application of section 2, or any provision in the regulations, and prescribing conditions for any such exemption;

(f) prescribing and prohibiting the use of connotations, suggestions, words, expressions or phrases in a name shown in a registration;

(g) governing the custody and destruction of registrations and certificates;

(h) prescribing fees to be charged for searches and copies of documents or information;

(i) prescribing any matter required or permitted by this Act to be prescribed.

Repeal

12. The *Partnerships Registration Act*, being chapter 371 of the Revised Statutes of Ontario, 1980, is repealed.

13.—(1) Section 2 of the *Corporations Information Act*, being chapter 96 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 23, section 1 and 1984, chapter 3, section 2, is repealed.

(2) Subsection 7 (1) of the said Act is amended by striking out "2" in the third line.

(3) Subsection 7 (2) of the said Act is amended by striking out "2" in the third line.

(4) Clauses 15 (a), 18 (b) and (c) of the said Act are repealed.

14.—(1) Clause 1 (e) of the *Limited Partnerships Act*, being chapter 241 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(e) "Registrar" means the Registrar appointed under the *Business Names Act, 1989*. 1989, c. ...

(2) Subsections 3 (5) and (6) of the said Act are repealed.

Transition

15.—(1) A name or designation that is stated in a declaration or a renewal thereof filed under section 1 or 9 of the *Partnerships Registration Act* shall be deemed to be registered under and in accordance with this Act and the regulations. R.S.O. 1980, c. 371

Idem

(2) A registration of a name or style or a renewal thereof that is filed under section 2 of the *Corporations Information Act* shall be deemed to be a registration under and in accordance with this Act and the regulations. R.S.O. 1980, c. 96

Commencement

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

17. The short title of this Act is the *Business Names Act, 1989*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Government Publications

Bill 108

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An Act respecting Business Names

The Hon. G. Sorbara
Minister of Consumer and Commercial Relations

1st Reading December 20th, 1989
2nd Reading June 4th, 1990
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

Printed under authority of the Legislative Assembly by the
©Queen's Printer for Ontario

EXPLANATORY NOTES

The purpose of the Bill is to provide for the registration of names used by businesses. The main thrust of the Bill is to ensure that every business operating in Ontario that uses a name other than its corporate name, in the case of a corporation, or the name of its owners, in the case of individuals, is registered.

Section 7 provides for the loss of the ability to sue by a person who contravenes specified provisions and section 10 provides for penalties for contravention of specified provisions.

The *Partnerships Registration Act* is repealed and parts of the *Corporations Information Act* and the *Limited Partnerships Act* are amended.

Bill 108 1989

An Act respecting Business Names

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Definitions

"business" includes every trade, occupation, profession, service or venture carried on with a view to profit;

"corporation" means a corporation wherever or however incorporated;

"Minister" means the Minister of Consumer and Commercial Relations;

"Ministry" means the Ministry of the Minister;

"person" includes an individual, sole proprietorship, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and an individual in his or her capacity as trustee, executor, administrator or other legal representative;

"prescribed" means prescribed by the regulations;

"Registrar" means the Registrar appointed under section 3;

"registered" means registered under this Act;

"regulations" means the regulations made under this Act.

2.—(1) No corporation shall carry on business or identify itself to the public under a name other than its corporate name unless the name is registered by that corporation. Registering name

(2) No individual shall carry on business or identify his or her business to the public under a name other than his or her own name unless the name is registered by that individual. Idem

Idem

(3) No persons associated in partnership shall carry on business or identify themselves to the public, except as a limited partnership carrying on business in accordance with the *Limited Partnerships Act*, unless the name of the partnership is registered by all of the partners.

R.S.O. 1980, c. 241

Exception

(4) Subsection (3) does not apply to prohibit persons associated in partnership from carrying on business or identifying themselves to the public under a name that is composed of the names of the partners.

Idem

(5) This section does not apply to prohibit the use of a name that contains characters from an alphabet other than the Roman alphabet if the name is used in conjunction with the registered name.

Name to be set out

(6) A corporation and such other persons as are prescribed carrying on business under a registered name or, in the case of a corporation, identifying itself to the public under a registered name, shall set out both the registered name as well as the person's name in all contracts, invoices, negotiable instruments and orders involving goods or services issued or made by the person.

Registrar

3.—(1) The Minister shall appoint a public servant in the Ministry as the Registrar.

Delegation of powers

(2) The Registrar may delegate any of the duties or powers of the Registrar to any public servant in the Ministry.

Records

(3) The Registrar shall maintain a record of every registration made under this Act or filed under the *Limited Partnerships Act*.

Available to the public

(4) Any person is entitled to examine, during normal business hours, the records maintained by the Registrar.

Registration

4.—(1) Subject to subsections (2) and (3), any person, upon paying the prescribed fee, may register a name under this Act for a term of five years.

Idem

(2) The Registrar shall not accept for registration a name that does not comply with the prescribed requirements.

Idem

(3) Only letters from the Roman alphabet, Arabic numerals or a combination of letters from the Roman alphabet and Arabic numerals together with punctuation marks and such other marks as are prescribed may form part of a registered name.

Changes

(4) If there is a change in information set out in a registration, the registrant shall register, in the prescribed form within fifteen days after the change, an amended registration showing the change.

Correcting information

(5) If the Registrar has grounds to believe that information registered is not correct or current, he or she may give notice to the registrant requiring that the information be corrected or updated within the time specified in the notice.

Idem

(6) A registrant receiving a notice under subsection (5) shall comply with the request in the notice or provide evidence to the Registrar that the information registered is correct or current, as the case may be.

Cancelling registration

(7) The Registrar shall cancel a registration,

(a) if a name was accepted for registration that does not comply with the prescribed requirements; or

(b) if the registrant requests the cancellation.

Idem

(8) The Registrar may cancel a registration if the registrant is given a notice under subsection (5) and does not comply with subsection (6).

Entering cancellation

(9) The Registrar shall indicate, on the record, every cancellation under subsection (7) or (8).

Notice of cancellation

(10) Before cancelling a registration other than on the request of the registrant or pursuant to a Court order, the Registrar shall give the registrant twenty-one days notice of the intention to cancel.

Appeal

(11) A person whose application to register a name is refused may appeal to the Divisional Court within twenty-one days after the day of the refusal.

Idem

(12) A registrant who receives a notice under subsection (10) may appeal to the Divisional Court within twenty-one days after receipt of the notice.

Idem

(13) If a notice under subsection (10) is under appeal, the Registrar shall not cancel the registration unless a final determination is made upholding the Registrar's decision.

Renewal of registration

5.—(1) A registrant is entitled to renew a registration before it expires upon paying the prescribed fee.

Late renewal

(2) A registrant is entitled to renew a registration within sixty days after it expires upon paying the prescribed fee for late renewal.

Effective date

(3) A renewal made under subsection (1) or (2) is effective on the day immediately following the expiration day of the registration being renewed.

Liability for damages

6.—(1) A person who suffers damages by reason of the registration of a name that is the same as or deceptively similar to another person's registered name is entitled to recover compensation from the registrant for damages suffered because of the registration.

Idem

(2) For the purposes of subsection (1), the compensation is limited to the greater of $500 and the actual amount of damages incurred.

Cancelling registration

(3) In giving a judgment for a plaintiff in an action brought under subsection (1), the court shall order the Registrar to cancel the registration that was the cause of the action.

Ability to sue

7.—(1) A person carrying on business in contravention of subsection 2 (1), (2) or (3) or subsection 4 (4) or (6) is not capable of maintaining a proceeding in a court in Ontario in connection with that business except with leave of the court.

Idem

(2) The court shall grant leave if the person seeking to maintain the proceeding satisfies the court that,

(a) the failure to register was inadvertent;

(b) there is no evidence that the public has been deceived or misled; and

(c) at the time of the application to the court, the person is not in contravention of this Act or the regulations.

Contracts valid

(3) No contract is void or voidable by reason only that it was entered into by a person who was in contravention of this Act or the regulations at the time the contract was made.

Certified copies

8.—(1) Upon payment of the prescribed fee, the Registrar shall issue to any person applying therefor,

(a) a certified copy of the record with respect to any name registered; or

(b) if a name is not registered, a certificate so stating.

(2) A certified copy or a certificate issued under this section is admissible in evidence in all courts as proof, in the absence of evidence to the contrary, of the contents of the document or of the non-registration of a name, as the case may be, without proof of the appointment or signature of the Registrar. Idem

(3) For the purpose of this section, the signature of the Registrar may be printed or otherwise mechanically or electronically reproduced. Idem

9.—(1) Records prepared and maintained by the Registrar may be in bound or loose-leaf form or in a photographic film form or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time. Form of records

(2) If records maintained by the Registrar are prepared and maintained otherwise than in written form, the Registrar shall furnish any copy required to be furnished in intelligible written form. Idem

(3) A report reproduced from records prepared and maintained otherwise than in written form that purports to be certified by the Registrar is, without proof of the Registrar's office or signature, admissible in evidence to the same extent as the original written records would have been. Idem

(4) The Registrar is not required to produce the original of a document if a copy is furnished in compliance with subsection (2). Copies

(5) For the purpose of this section, a document is a copy of an original if it contains all the information contained in the original. Idem

10.—(1) Every person who, without reasonable cause, contravenes section 2 or subsection 4 (4) or (6) or submits a statement in an application for a registration under this Act that is false or misleading with respect to any material fact is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or, if the person is a corporation, to a fine of not more than $25,000. Offence

(2) If a corporation is guilty of an offence under subsection (1), every director or officer of the corporation and every person acting as its representative in Ontario who authorized, permitted or acquiesced in such an offence is also guilty of an Idem

offence and on conviction is liable to a fine of not more than $2,000.

Regulations

11. The Lieutenant Governor in Council may make regulations,

(a) prescribing information to be contained in a registration;

(b) prescribing the duties of the Registrar;

(c) requiring the payment of fees and fees for late registration and prescribing the amounts thereof;

(d) prescribing forms and providing for their use;

(e) exempting any class of person or business from the application of section 2, or any provision in the regulations, and prescribing conditions for any such exemption;

(f) prescribing and prohibiting the use of connotations, suggestions, words, expressions or phrases in a name shown in a registration;

(g) governing the custody and destruction of registrations and certificates;

(h) prescribing fees to be charged for searches and copies of documents or information;

(i) prescribing any matter required or permitted by this Act to be prescribed.

Repeal

12. The *Partnerships Registration Act*, being chapter 371 of the Revised Statutes of Ontario, 1980, is repealed.

13.—(1) Section 2 of the *Corporations Information Act*, being chapter 96 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 23, section 1 and 1984, chapter 3, section 2, is repealed.

(2) Subsection 7 (1) of the said Act is amended by striking out "2" in the third line.

(3) Subsection 7 (2) of the said Act is amended by striking out "2" in the third line.

(4) Clauses 15 (a), 18 (b) and (c) of the said Act are repealed.

14.—(1) Clause 1 (e) of the *Limited Partnerships Act*, being chapter 241 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(e) "Registrar" means the Registrar appointed under the *Business Names Act, 1990*. 1990, c. ...

(2) Subsections 3 (5) and (6) of the said Act are repealed.

Transition

15.—(1) A name or designation that is stated in a declaration or a renewal thereof filed under section 1 or 9 of the *Partnerships Registration Act* shall be deemed to be registered under and in accordance with this Act and the regulations. R.S.O. 1980, c. 371

Idem

(2) A registration of a name or style or a renewal thereof that is filed under section 2 of the *Corporations Information Act* shall be deemed to be a registration under and in accordance with this Act and the regulations. R.S.O. 1980, c. 96

Commencement

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

17. The short title of this Act is the *Business Names Act, 1990*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 108

(Chapter 5
Statutes of Ontario, 1990)

An Act respecting Business Names

The Hon. G. Sorbara
Minister of Consumer and Commercial Relations

1st Reading	December 20th, 1989
2nd Reading	June 4th, 1990
3rd Reading	June 18th, 1990
Royal Assent	June 21st, 1990

Printed under authority of the Legislative Assembly by the
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Bill 108 1989

An Act respecting Business Names

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"business" includes every trade, occupation, profession, service or venture carried on with a view to profit;

"corporation" means a corporation wherever or however incorporated;

"Minister" means the Minister of Consumer and Commercial Relations;

"Ministry" means the Ministry of the Minister;

"person" includes an individual, sole proprietorship, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and an individual in his or her capacity as trustee, executor, administrator or other legal representative;

"prescribed" means prescribed by the regulations;

"Registrar" means the Registrar appointed under section 3;

"registered" means registered under this Act;

"regulations" means the regulations made under this Act.

Registering name

2.—(1) No corporation shall carry on business or identify itself to the public under a name other than its corporate name unless the name is registered by that corporation.

Idem

(2) No individual shall carry on business or identify his or her business to the public under a name other than his or her own name unless the name is registered by that individual.

Idem

(3) No persons associated in partnership shall carry on business or identify themselves to the public, except as a limited partnership carrying on business in accordance with the *Limited Partnerships Act*, unless the name of the partnership is registered by all of the partners.

R.S.O. 1980, c. 241

Exception

(4) Subsection (3) does not apply to prohibit persons associated in partnership from carrying on business or identifying themselves to the public under a name that is composed of the names of the partners.

Idem

(5) This section does not apply to prohibit the use of a name that contains characters from an alphabet other than the Roman alphabet if the name is used in conjunction with the registered name.

Name to be set out

(6) A corporation and such other persons as are prescribed carrying on business under a registered name or, in the case of a corporation, identifying itself to the public under a registered name, shall set out both the registered name as well as the person's name in all contracts, invoices, negotiable instruments and orders involving goods or services issued or made by the person.

Registrar

3.—(1) The Minister shall appoint a public servant in the Ministry as the Registrar.

Delegation of powers

(2) The Registrar may delegate any of the duties or powers of the Registrar to any public servant in the Ministry.

Records

(3) The Registrar shall maintain a record of every registration made under this Act or filed under the *Limited Partnerships Act*.

Available to the public

(4) Any person is entitled to examine, during normal business hours, the records maintained by the Registrar.

Registration

4.—(1) Subject to subsections (2) and (3), any person, upon paying the prescribed fee, may register a name under this Act for a term of five years.

Idem

(2) The Registrar shall not accept for registration a name that does not comply with the prescribed requirements.

Idem

(3) Only letters from the Roman alphabet, Arabic numerals or a combination of letters from the Roman alphabet and Arabic numerals together with punctuation marks and such other marks as are prescribed may form part of a registered name.

Changes

(4) If there is a change in information set out in a registration, the registrant shall register, in the prescribed form within fifteen days after the change, an amended registration showing the change.

Correcting information

(5) If the Registrar has grounds to believe that information registered is not correct or current, he or she may give notice to the registrant requiring that the information be corrected or updated within the time specified in the notice.

Idem

(6) A registrant receiving a notice under subsection (5) shall comply with the request in the notice or provide evidence to the Registrar that the information registered is correct or current, as the case may be.

Cancelling registration

(7) The Registrar shall cancel a registration,

(a) if a name was accepted for registration that does not comply with the prescribed requirements; or

(b) if the registrant requests the cancellation.

Idem

(8) The Registrar may cancel a registration if the registrant is given a notice under subsection (5) and does not comply with subsection (6).

Entering cancellation

(9) The Registrar shall indicate, on the record, every cancellation under subsection (7) or (8).

Notice of cancellation

(10) Before cancelling a registration other than on the request of the registrant or pursuant to a Court order, the Registrar shall give the registrant twenty-one days notice of the intention to cancel.

Appeal

(11) A person whose application to register a name is refused may appeal to the Divisional Court within twenty-one days after the day of the refusal.

Idem

(12) A registrant who receives a notice under subsection (10) may appeal to the Divisional Court within twenty-one days after receipt of the notice.

Idem

(13) If a notice under subsection (10) is under appeal, the Registrar shall not cancel the registration unless a final determination is made upholding the Registrar's decision.

Renewal of registration

5.—(1) A registrant is entitled to renew a registration before it expires upon paying the prescribed fee.

Late renewal

(2) A registrant is entitled to renew a registration within sixty days after it expires upon paying the prescribed fee for late renewal.

Effective date

(3) A renewal made under subsection (1) or (2) is effective on the day immediately following the expiration day of the registration being renewed.

Liability for damages

6.—(1) A person who suffers damages by reason of the registration of a name that is the same as or deceptively similar to another person's registered name is entitled to recover compensation from the registrant for damages suffered because of the registration.

Idem

(2) For the purposes of subsection (1), the compensation is limited to the greater of $500 and the actual amount of damages incurred.

Cancelling registration

(3) In giving a judgment for a plaintiff in an action brought under subsection (1), the court shall order the Registrar to cancel the registration that was the cause of the action.

Ability to sue

7.—(1) A person carrying on business in contravention of subsection 2 (1), (2) or (3) or subsection 4 (4) or (6) is not capable of maintaining a proceeding in a court in Ontario in connection with that business except with leave of the court.

Idem

(2) The court shall grant leave if the person seeking to maintain the proceeding satisfies the court that,

(a) the failure to register was inadvertent;

(b) there is no evidence that the public has been deceived or misled; and

(c) at the time of the application to the court, the person is not in contravention of this Act or the regulations.

Contracts valid

(3) No contract is void or voidable by reason only that it was entered into by a person who was in contravention of this Act or the regulations at the time the contract was made.

Certified copies

8.—(1) Upon payment of the prescribed fee, the Registrar shall issue to any person applying therefor,

(a) a certified copy of the record with respect to any name registered; or

(b) if a name is not registered, a certificate so stating.

(2) A certified copy or a certificate issued under this section is admissible in evidence in all courts as proof, in the absence of evidence to the contrary, of the contents of the document or of the non-registration of a name, as the case may be, without proof of the appointment or signature of the Registrar. Idem

(3) For the purpose of this section, the signature of the Registrar may be printed or otherwise mechanically or electronically reproduced. Idem

9.—(1) Records prepared and maintained by the Registrar may be in bound or loose-leaf form or in a photographic film form or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time. Form of records

(2) If records maintained by the Registrar are prepared and maintained otherwise than in written form, the Registrar shall furnish any copy required to be furnished in intelligible written form. Idem

(3) A report reproduced from records prepared and maintained otherwise than in written form that purports to be certified by the Registrar is, without proof of the Registrar's office or signature, admissible in evidence to the same extent as the original written records would have been. Idem

(4) The Registrar is not required to produce the original of a document if a copy is furnished in compliance with subsection (2). Copies

(5) For the purpose of this section, a document is a copy of an original if it contains all the information contained in the original. Idem

10.—(1) Every person who, without reasonable cause, contravenes section 2 or subsection 4 (4) or (6) or submits a statement in an application for a registration under this Act that is false or misleading with respect to any material fact is guilty of an offence and on conviction is liable to a fine of not more than $2,000 or, if the person is a corporation, to a fine of not more than $25,000. Offence

(2) If a corporation is guilty of an offence under subsection (1), every director or officer of the corporation and every person acting as its representative in Ontario who authorized, permitted or acquiesced in such an offence is also guilty of an Idem

offence and on conviction is liable to a fine of not more than $2,000.

Regulations

11. The Lieutenant Governor in Council may make regulations,

(a) prescribing information to be contained in a registration;

(b) prescribing the duties of the Registrar;

(c) requiring the payment of fees and fees for late registration and prescribing the amounts thereof;

(d) prescribing forms and providing for their use;

(e) exempting any class of person or business from the application of section 2, or any provision in the regulations, and prescribing conditions for any such exemption;

(f) prescribing and prohibiting the use of connotations, suggestions, words, expressions or phrases in a name shown in a registration;

(g) governing the custody and destruction of registrations and certificates;

(h) prescribing fees to be charged for searches and copies of documents or information;

(i) prescribing any matter required or permitted by this Act to be prescribed.

12. The *Partnerships Registration Act*, being chapter 371 of the Revised Statutes of Ontario, 1980, is repealed.

13.—(1) Section 2 of the *Corporations Information Act*, being chapter 96 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 23, section 1 and 1984, chapter 3, section 2, is repealed.

(2) Subsection 7 (1) of the said Act is amended by striking out "2" in the third line.

(3) Subsection 7 (2) of the said Act is amended by striking out "2" in the third line.

(4) Clauses 15 (a), 18 (b) and (c) of the said Act are repealed.

14.—(1) Clause 1 (e) of the *Limited Partnerships Act*, being chapter 241 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(e) "Registrar" means the Registrar appointed under the *Business Names Act, 1990*. 1990, c. 5

(2) Subsections 3 (5) and (6) of the said Act are repealed.

Transition

15.—(1) A name or designation that is stated in a declaration or a renewal thereof filed under section 1 or 9 of the *Partnerships Registration Act* shall be deemed to be registered under and in accordance with this Act and the regulations. R.S.O. 1980, c. 371

Idem

(2) A registration of a name or style or a renewal thereof that is filed under section 2 of the *Corporations Information Act* shall be deemed to be a registration under and in accordance with this Act and the regulations. R.S.O. 1980, c. 96

Commencement

16. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

17. The short title of this Act is the *Business Names Act, 1990*.

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Government
Publications

Bill 109

2ND SESSION, 34TH LEGISLATURE, ONTARIO
38 ELIZABETH II, 1989

Bill 109

(Chapter 93
Statutes of Ontario, 1989)

An Act to authorize the payment of certain amounts for the Public Service for the fiscal year ending on the 31st day of March, 1990

The Hon. R. Nixon
Treasurer of Ontario and
Minister of Economics

1st Reading	December 20th, 1989
2nd Reading	December 20th, 1989
3rd Reading	December 20th, 1989
Royal Assent	December 20th, 1989

Printed under authority of the
Legislative Assembly by the
Queen's Printer for Ontario

Projet de loi 109

2e SESSION, 34e LÉGISLATURE, ONTARIO
38 ELIZABETH II, 1989

Projet de loi 109

(Chapitre 93
Lois de l'Ontario de 1989)

Loi autorisant le paiement de certaines sommes destinées à la fonction publique pour l'exercice se terminant le 31 mars 1990

L'honorable R. Nixon
Trésorier de l'Ontario et
ministre de l'Économie

LIBRARY
JAN 10 1990
University of Toronto

1re lecture	20 décembre 1989
2e lecture	20 décembre 1989
3e lecture	20 décembre 1989
sanction royale	20 décembre 1989

Imprimé avec l'autorisation
de l'Assemblée législative par
l'Imprimeur de la Reine pour l'Ontario

Bill 109 1989

An Act to authorize the payment of certain amounts for the Public Service for the fiscal year ending on the 31st day of March, 1990

Whereas messages from the Honourable Lincoln Alexander, Lieutenant Governor of the Province of Ontario, accompanied by estimates and supplementary estimates, indicate that the amounts mentioned in the Schedule are required to pay expenses of the public service of Ontario that are not otherwise provided for, for the fiscal year ending on the 31st day of March, 1990;

Therefore, HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

$36,704,503,400 granted for fiscal year 1989-90

1.—(1) For the period from the 1st day of April, 1989 to the 31st day of March, 1990, amounts not exceeding a total of $36,704,503,400 may be paid out of the Consolidated Revenue Fund, to be applied to the expenses of the public service that are not otherwise provided for, as set out in the Schedule.

Votes and items

(2) The money shall be applied in accordance with the votes and items of the estimates and supplementary estimates.

Exception

(3) Despite subsections (1) and (2), if powers and duties are transferred from one minister of the Crown to another during the fiscal year ending on the 31st day of March, 1990, the appropriate amounts in the votes and items of the estimates and supplementary estimates may be transferred accordingly, on the authority of a certificate of the Management Board of Cabinet.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Supply Act, 1989*.

Projet de loi 109 1989

Loi autorisant le paiement de certaines sommes destinées à la fonction publique pour l'exercice se terminant le 31 mars 1990

Attendu qu'il ressort des messages de l'honorable Lincoln Alexander, lieutenant-gouverneur de la province de l'Ontario, accompagnés du budget des dépenses et du budget des dépenses supplémentaire que les sommes indiquées à l'annexe sont nécessaires pour assumer les dépenses de la fonction publique de l'Ontario auxquelles il n'est pas autrement pourvu pendant l'exercice se terminant le 31 mars 1990;

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :

1 (1) Le gouvernement peut, pour la période allant du 1er avril 1989 au 31 mars 1990, prélever sur le Trésor des sommes ne dépassant pas au total 36 704 503 400 $ et les affecter aux dépenses de la fonction publique, indiquées à l'annexe, auxquelles il n'est pas autrement pourvu. 36 704 503 400 $ accordés pour l'exercice 1989-1990

(2) Cette somme est affectée conformément aux crédits alloués et aux postes du budget des dépenses et du budget des dépenses supplémentaire. Crédits et postes

(3) Malgré les paragraphes (1) et (2), si des attributions d'un ministre de la Couronne sont transmises à un autre ministre pendant l'exercice se terminant le 31 mars 1990, les sommes appropriées, figurant aux crédits alloués et aux postes du budget des dépenses et du budget des dépenses supplémentaire, peuvent être transférées en conséquence, moyennant l'autorisation, par délivrance d'un certificat, du Conseil de gestion du gouvernement. Exception

2 La présente loi entre en vigueur le jour où elle reçoit la sanction royale. Entrée en vigueur

3 Le titre abrégé de la présente loi est *Loi de crédits de 1989*. Titre abrégé

SCHEDULE

	1989-90 Estimates	Supplementary Estimates	Total
	$	$	$
Agriculture and Food	506,792,300		506,792,300
Assembly, Office of the	93,570,700	3,322,400	96,893,100
Attorney General	478,653,800		478,653,800
Cabinet Office	9,338,600		9,338,600
Chief Election Officer, Office of the	645,400		645,400
Citizenship	51,514,000		51,514,000
Colleges and Universities	2,745,924,300		2,745,924,300
Community and Social Services	5,007,140,500		5,007,140,500
Consumer and Commercial Relations	156,159,200		156,159,200
Correctional Services	453,853,900		453,853,900
Culture and Communications	316,762,500		316,762,500
Disabled Persons, Office for	7,859,000		7,859,000
Education	4,623,098,200		4,623,098,200
Energy	42,698,300		42,698,300
Environment	528,456,700		528,456,700
Financial Institutions	40,690,300		40,690,300
Government Services	726,835,200		726,835,200
Health	13,903,533,100		13,903,533,100
Housing	536,604,800		536,604,800
Industry, Trade and Technology	301,314,200		301,314,200
Intergovernmental Affairs	8,652,900		8,652,900
Labour	137,771,900		137,771,900
Lieutenant Governor, Office of the	581,100		581,100
Management Board	167,843,800		167,843,800
Municipal Affairs	566,467,000		566,467,000
Native Affairs, Office Responsible for	6,313,700		6,313,700
Natural Resources	569,713,500		569,713,500
Northern Development and Mines	322,001,500		322,001,500
Ombudsman, Office of the	7,471,100	336,000	7,807,100
Premier, Office of the	2,349,300		2,349,300
Provincial Auditor, Office of the	7,333,000	252,200	7,585,200
Revenue	839,678,500		839,678,500
Senior Citizens Affairs, Office Responsible for	9,392,100		9,392,100
Skills Development	423,557,400		423,557,400
Solicitor General	469,902,400		469,902,400
Tourism and Recreation	200,048,500		200,048,500
Transportation	2,313,050,500		2,313,050,500
Treasury and Economics	100,308,300		100,308,300
Women's Issues, Office Responsible for	16,711,300		16,711,300
TOTAL	36,700,592,800	3,910,600	36,704,503,400

ANNEXE

	Budget des dépenses de 1989-1990	Budget des dépenses supplémentaire	Total
	$	$	$
Affaires autochtones, Office des	6 313 700		6 313 700
Affaires civiques	51 514 000		51 514 000
Affaires intergouvernementales	8 652 900		8 652 900
Affaires municipales	566 467 000		566 467 000
Agriculture et Alimentation	506 792 300		506 792 300
Assemblée législative, Bureau de l'	93 570 700	3 322 400	96 893 100
Collèges et Universités	2 745 924 300		2 745 924 300
Condition féminine, Office de la	16 711 300		16 711 300
Conseil de gestion du gouvernement	167 843 800		167 843 800
Conseil des ministres, Bureau du	9 338 600		9 338 600
Consommation et Commerce	156 159 200		156 159 200
Culture et Communications	316 762 500		316 762 500
Développement du Nord et des Mines	322 001 500		322 001 500
Directeur général des élections, Bureau du	645 400		645 400
Éducation	4 623 098 200		4 623 098 200
Énergie	42 698 300		42 698 300
Environnement	528 456 700		528 456 700
Formation professionnelle	423 557 400		423 557 400
Industrie, Commerce et Technologie	301 314 200		301 314 200
Institutions financières	40 690 300		40 690 300
Lieutenant-gouverneur, Bureau du	581 100		581 100
Logement	536 604 800		536 604 800
Ombudsman, Bureau de l'	7 471 100	336 000	7 807 100
Personnes âgées, Office des	9 392 100		9 392 100
Personnes handicapées, Office des	7 859 000		7 859 000
Premier ministre, Cabinet du	2 349 300		2 349 300
Procureur général	478 653 800		478 653 800
Revenu	839 678 500		839 678 500
Richesses naturelles	569 713 500		569 713 500
Santé	13 903 533 100		13 903 533 100
Services correctionnels	453 853 900		453 853 900
Services gouvernementaux	726 835 200		726 835 200
Services sociaux et communautaires	5 007 140 500		5 007 140 500
Solliciteur général	469 902 400		469 902 400
Tourisme et Loisirs	200 048 500		200 048 500
Transports	2 313 050 500		2 313 050 500
Travail	137 771 900		137 771 900
Trésor et Économie	100 308 300		100 308 300
Vérificateur provincial, Bureau du	7 333 000	252 200	7 585 200
TOTAL	36 700 592 800	3 910 600	36 704 503 400

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2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 110

An Act to amend the Residential Rent Regulation Act, 1986

LIBRARY

Mr. Fleet

1st Reading March 20th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to amend the provisions of the *Residential Rent Regulation Act, 1986* relating to rent review.

Under section 74 of the Act, a landlord may make an application for approval of a rent increase higher than the increase otherwise permitted under the Act. The Bill adds a new subsection 79 (1a) to the Act. The new provision provides that an application under section 74 for a rent increase that is based on an increase in financing costs resulting from a landlord's purchase of a residential complex may be made only once in any ten-year period.

The amendment to subsection 79 (4) of the Act is consequential to the addition of new subsection 79 (1a) to the Act.

Bill 110 1990

An Act to amend the Residential Rent Regulation Act, 1986

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 79 of the *Residential Rent Regulation Act, 1986* is amended by adding the following subsection: 1986, c. 63

(1a) An application under section 74 for a rent increase in respect of a residential complex that is based on an increase in financing costs resulting from a landlord's purchase of the residential complex may be made only once in any ten-year period. Limitation on applications based on financing costs

(2) Subsection 79 (4) of the Act is amended by striking out "For the purposes of subsections (1), (3) and (6)" in the first line and substituting "For the purposes of subsections (1), (1a), (3) and (6)".

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Residential Rent Regulation Amendment Act, 1990*. Short title

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Bill 111

An Act to amend the Landlord and Tenant Act

Mr. Fleet

1st Reading March 20th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to amend the provisions of the *Landlord and Tenant Act* concerning early termination of a residential tenancy.

Clause 109 (1) (c) of the Act currently provides that a residential tenancy may be terminated if a tenant's conduct substantially interferes with the reasonable enjoyment of the premises by the landlord or the other tenants. The Bill amends this clause to provide that a tenancy may be terminated if a tenant's conduct substantially interferes with the occupancy of the premises by the landlord or the other tenants.

The Bill also adds a new subsection to section 109. New subsection 109 (1a) provides that the breach of a provision of a tenancy agreement is not, in itself, grounds for a landlord to obtain a writ of possession.

Bill 111 1990

An Act to amend the Landlord and Tenant Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 109 (1) (c) of the *Landlord and Tenant Act* is repealed and the following substituted: R.S.O. 1980, c. 232

(c) the conduct of the tenant or a person permitted in the residential premises by the tenant is such that it substantially interferes with the occupancy of the premises for all usual purposes by the landlord or the other tenants.

(2) Section 109 of the Act is amended by adding the following subsection:

(1a) For purposes of clause (1) (c), the breach of a provision of a tenancy agreement does not in itself constitute conduct that substantially interferes with the occupancy of the premises for all usual purposes by the landlord or the other tenants. Effect of breach of tenancy agreement

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Landlord and Tenant Amendment Act, 1990*. Short title

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Bill 112

An Act to amend the Education Act

Mr. Johnston
(Scarborough-West)



1st Reading March 20th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to require that American Sign Language (A.S.L.) or la Langue des signes québécois (L.S.Q.) be used as a language of instruction in schools for the deaf and in other schools in Ontario where the number of pupils warrants its use.

The Bill also recognizes A.S.L. and L.S.Q. as heritage languages.

Bill 112 1990

An Act to amend the Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 10 (1) of the *Education Act*, as amended by the Statutes of Ontario, 1982, chapter 32, section 4, 1989, chapter 1, section 2, 1989, chapter 2, section 2 and 1989, chapter 33, section 1, is further amended by adding the following paragraphs: R.S.O. 1980, c. 129

19a. requiring that American Sign Language or la Langue des signes québécois, as the case requires, be used as a language of instruction, language of instruction for the deaf

i. in any subject or subjects in any year of the primary, junior, intermediate or senior division where the number of pupils exceeds the number that is prescribed by the regulations, and

ii. in any subject or subjects in schools for the deaf;

. . . . .

35. requiring boards to offer programs in American Sign Language or la Langue des signes québécois, as the case requires, and governing the establishment and operation of such programs. programs in sign language

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Education Amendment Act, 1990*. Short title

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Bill 113

An Act to establish the Rights of Victims of Crime

Mr. Jackson

1st Reading March 20th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

The Bill applies to victims of crime and includes as victims specified relatives of victims of crime where the commission of an offence results in the death of the victim.

The Bill provides that the following principles apply to the treatment of victims of crime:

1. Victims should be treated with courtesy, compassion and respect for their personal dignity and privacy.

2. Victims should receive social services, health care and medical treatment, counselling and legal assistance responsive to their needs.

3. Victims should receive information from investigating police officers concerning the investigation and the victim's protection.

4. Victims should receive information from prosecuting Crown Attorneys concerning any proceedings.

5. Victims should have an opportunity to make representations to the Crown Attorney concerning interim release and sentencing.

6. Victims should receive notice of impending release from custody of a convicted person.

7. A victim of a sexual assault should only be interviewed by a police officer of the same gender if the victim so requests.

The Bill also affords the following protections to victims of crime when they are plaintiffs in civil actions against their assailants:

1. No order for security for costs or for disallowance of interest can be made against them.

2. The victim may be compensated for emotional distress.

3. A judge is not to consider the sentence imposed on the person convicted in awarding damages to the victim. The sentence is to be considered, however, before making an award for punitive damages.

Bill 113 1990

An Act to establish the Rights of Victims of Crime

Preamble

Whereas criminal conduct is a violation of the rights and security of the people against whom the crimes are committed; and whereas the victims of criminal conduct require compassionate and equitable treatment, unrestricted access to necessary services and full compensation;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition
R.S.C. 1985, c. C-46

1. In this Act, "victim" means a person who, as a result of the commission of an offence by another against the *Criminal Code* (Canada), suffers emotional or physical harm or loss of, or damage to, property and, if the commission of the offence results in the death of the person, a spouse, guardian, parent, sibling, child or dependant of the person.

Statement of principle

2. The following principles apply to the treatment of victims of crime:

1. Victims should be treated with courtesy, compassion and respect for their personal dignity and privacy.

2. Victims should have access to social services, health care and medical treatment, counselling and legal assistance responsive to their needs.

3. Victims should be informed at the time of the investigation of the crime by the police of,

    i. the services and remedies available to victims of crime,

    ii. the provisions of this Act and of the *Compensation for Victims of Crime Act* that might assist them, and

R.S.O. 1980, c. 82

iii. the protection available to victims to prevent unlawful intimidation.

4. Victims should be informed by the police of,

i. the progress of investigations that relate to the cirme, and

ii. the charges laid with respect to the crime and, if no charges are laid, the reasons why no charges are laid.

5. Victims should be informed by the prosecuting Crown Attorney of,

i. the victim's role in the prosecution,

ii. court procedures that relate to the prosecution,

iii. the dates and places of all proceedings that relate to the prosecution, and

iv. the outcome of all proceedings, including any proceedings on appeal.

6. Victims should be informed of any pretrial arrangements that are made that relate to a plea that may be entered by the accused at trial and should have an opportunity to make representations to the prosecuting Crown Attorney before any final arrangement is made with respect to the plea.

7. Victims should be given an opportunity to make representations to the prosecuting Crown Attorney respecting the interim release and, in the event of conviction, the sentencing of an accused.

8. Victims of an offence against the person under Part VIII of the *Criminal Code* (Canada) should be notified of any application for release or any impending release from custody of the convicted person, including any release on parole, on temporary pass or in accordance with a program of temporary absence, or any escape of the person from lawful custody.

R.S.C. 1985, c. C-46

9. Victims of sexual assault should be interviewed during the investigation of the crime only by police

officers and officials of the same gender as the victim if the victim so requests.

Liability where offence against person R.S.C. 1985, c. C-46

3.—(1) A person convicted of an offence against the person under Part VIII of the *Criminal Code* (Canada) is liable in damages to every victim of the offence for emotional distress, and bodily harm resulting from the distress, arising from the commission of the offence.

Presumption for victim of assault

(2) The following victims shall be presumed to have suffered emotional distress:

1. A victim of an assault if the victim is or was a spouse of the assailant.

2. A victim of a sexual assault.

3. A victim of an attempted sexual assault.

Security for costs

4.—(1) Despite any rule or statutory provision respecting security for costs, a victim shall not be required to provide security for costs in an action brought by the victim against a person convicted of committing the offence.

Court may not disallow interest 1984, c. 11

(2) A judge may not disallow interest under clause 140 (a) of the *Courts of Justice Act, 1984* in an action brought by a victim against a person convicted of committing the offence.

Proof of conviction

5. In an action brought by a victim against a person convicted of committing the offence, proof of conviction shall be taken as conclusive evidence that the offence was committed by the person convicted and that the facts stated in the information or indictment upon which the conviction is entered are true if,

(a) the time for an appeal has expired; or

(b) an appeal was taken, it was dismissed and no further appeal is available.

Consideration in awarding damages

6.—(1) Subject to subsection (2), a judge awarding damages in an action brought by a victim against a person convicted of committing the offence shall not consider the sentence, if any, imposed on the person convicted.

Idem

(2) The judge shall take into consideration the sentence, if any, imposed upon the person convicted before making an award for punitive damages.

Application of Act

7.—(1) This Act applies only to matters falling under the classes of subjects enumerated in section 92 of the *Constitution Act, 1867*.

Interpretation

(2) This Act shall not be interpreted so as to prejudicially affect a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms*.

Regulations

8. The Lieutenant Governor in Council may make regulations prescribing standards to be followed in enforcing the rights of victims under this Act.

Commencement

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

10. The short title of this Act is the *Victims' Bill of Rights Act, 1990*.

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Bill 114

An Act to amend the Ontario Lottery Corporation Act

The Hon. K. Black
Minister of Tourism and Recreation

1st Reading March 21st, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

Section 9 of the Act now provides that the net profits of the Ontario Lottery Corporation are available to be appropriated by the Legislature for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor, as well as for the activities of the Ontario Trillium Foundation. The Bill amends section 9 to provide that the net profits of the Ontario Lottery Corporation are also available to be appropriated by the Legislature for the protection of the environment.

The Bill does not amend the existing scheme, set out in section 9 of the Act, for dealing with net profits of the Corporation that are not specifically appropriated by the Legislature. Under this scheme, any part of the net profits of the Corporation in a fiscal year of Ontario that is not appropriated by the Legislature in the fiscal year for the above-mentioned purposes is to be treated as part of the appropriation made by the Legislature in the fiscal year for the operation of hospitals.

Bill 114 1990

An Act to amend the Ontario Lottery Corporation Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 9 of the *Ontario Lottery Corporation Act*, as re-enacted by the Statutes of Ontario, 1989, chapter 90, section 1, is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause: R.S.O. 1980, c. 344

(c) for the protection of the environment,

. . . . .

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Ontario Lottery Corporation Amendment Act, 1990*. Short title

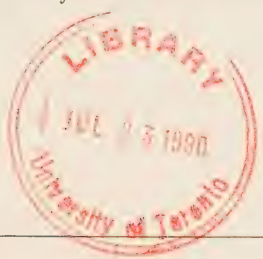
2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 114

(Chapter 11
Statutes of Ontario, 1990)

An Act to amend the Ontario Lottery Corporation Act

The Hon. K. Black
Minister of Tourism and Recreation



1st Reading	March 21st, 1990
2nd Reading	May 31st, 1990
3rd Reading	June 26th, 1990
Royal Assent	June 28th, 1990

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Bill 114 1990

An Act to amend the Ontario Lottery Corporation Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 9 of the *Ontario Lottery Corporation Act*, as re-enacted by the Statutes of Ontario, 1989, chapter 90, section 1, is amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause: R.S.O. 1980, c. 344

(c) for the protection of the environment,

. . . . .

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Ontario Lottery Corporation Amendment Act, 1990*. Short title

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Bill 115

An Act to amend the Representation Act, 1986

Mr. MacDonald

1st Reading March 21st, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

Self-explanatory.

Bill 115 1990

An Act to amend the Representation Act, 1986

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Schedule to the *Representation Act, 1986* is amended by renaming "THE ELECTORAL DISTRICT OF PRINCE EDWARD-LENNOX" as "THE ELECTORAL DISTRICT OF PRINCE EDWARD-LENNOX-SOUTH HASTINGS". 1986, c. 30

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Representation Amendment Act, 1990*. Short title

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Government
Publications

Bill 115

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 115

(Chapter 1
Statutes of Ontario, 1990)

An Act to amend the Representation Act, 1986

Mr. MacDonald



1st Reading	March 21st, 1990
2nd Reading	April 5th, 1990
3rd Reading	April 5th, 1990
Royal Assent	April 19th, 1990

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Bill 115 1990

An Act to amend the Representation Act, 1986

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Schedule to the *Representation Act, 1986* is amended by renaming "THE ELECTORAL DISTRICT OF PRINCE EDWARD-LENNOX" as "THE ELECTORAL DISTRICT OF PRINCE EDWARD-LENNOX-SOUTH HASTINGS". 1986, c. 30

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Representation Amendment Act, 1990*. Short title

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Bill 116

An Act to amend the Environmental Protection Act

Mrs. Grier

1st Reading March 22nd, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purposes of the Bill are:

1. To give the general public the opportunity to initiate and otherwise participate fully in any hearing before the Environmental Appeal Board.

2. To ensure that there is no stay of any order made by the Ministry of the Environment while the person on whom the order has been served is appealing the order (unless the person is successful in an application to a court or other appellate tribunal to impose a stay).

3. To allow the Board or other appellate tribunal the power to make orders with respect to costs as a result of a hearing before it.

Bill 116 1990

An Act to amend the Environmental Protection Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 121 (1) of the *Environmental Protection Act* is amended by striking out "fifteen days" in the fourteenth line and substituting "thirty days". R.S.O. 1980, c. 141

(2) Subsection 121 (2) of the Act, as amended by the Statutes of Ontario, 1988, chapter 54, section 41, is further amended by striking out "fifteen days" in the fifteenth line and substituting "thirty days".

2. Section 122 of the Act, as amended by the Statutes of Ontario, 1983, chapter 52, section 17, is repealed and the following substituted:

122.—(1) A person to whom an order of the Director is directed may, by written notice served upon the Director and the Board within thirty days after service on the person of a copy of the order, require a hearing by the Board. Appeal of order

(2) The commencement of a proceeding before the Board does not operate as a stay of any action taken or order issued under this Act. Stay on appeal

(3) No failure or refusal to issue, amend, vary or revoke an order is an order. Failure or refusal to issue, etc., order

(4) If the Director takes action under subsection 121 (1) or (2) or issues an order under this Act that may be appealed to the Board, the Director, Notice

(a) shall serve notice of the action or order, together with written reasons therefor, on the clerk of the municipality affected by the action or order; and

(b) if there is in the locality affected by the action or order a newspaper that has general circulation and that is published at least once a week, shall cause a copy of the notice and reasons to be published once a week for two consecutive weeks in the newspaper.

Appeal of action or order

(5) A person may, by written notice served upon the Director and the Board within fifteen days after the second notice is published in the newspaper, require a hearing by the Board with respect to the subject-matter of the action or order.

Stay on appeal

(6) Upon application to the court or other appellate tribunal before which an appeal has been commenced under this Act and upon giving written notice to all other parties in the appeal, a party to a hearing referred to in this section may apply for a stay of the action or order that is under appeal.

Idem

(7) The court or other appellate tribunal may grant a stay of an action taken or an order issued under this Act if, in the opinion of the court or tribunal, it is in the public interest to do so and the stay will not cause an adverse effect.

3. Section 122b of the Act, as enacted by the Statutes of Ontario, 1983, chapter 52, section 19, is repealed.

4. The Act is amended by adding the following section:

Order for cost

124a. A court or other appellate tribunal, in making an order under this Act, may make such further order with respect to costs as the court or tribunal considers appropriate in the circumstances.

Commencement

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. The short title of this Act is the *Environmental Protection Amendment Act, 1990*.

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Bill 117

An Act to amend the Planning Act, 1983

Mr. Farnan



1st Reading March 27th, 1990

2nd Reading

3rd Reading

Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to amend subsection 51 (1) of the *Planning Act, 1983*. As currently worded, this provision prohibits the sale of land under an unregistered plan of subdivision, but an exception is provided to permit the sale of land under a plan of subdivision that has received draft approval under section 50 of the Act. The Bill re-enacts subsection 51 (1) to delete this exception.

Bill 117 1990

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 51 (1) of the *Planning Act, 1983* is repealed and the following substituted: 1983, c. 1

(1) No person shall subdivide and offer for sale, agree to sell or sell land by a description in accordance with an unregistered plan of subdivision. Sale of lands in accordance with unregistered plan prohibited

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Planning Amendment Act, 1990*. Short title

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2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 118

An Act respecting Unsolicited Facsimile Transmissions

Mr. Cousens

LIBRARY
MAR 3 1990
University of Toronto

1st Reading March 28th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to prohibit the sending of unsolicited transmissions to facsimile machines for purposes of commercial solicitation. The prohibition would not apply to transmissions made in the course of on-going negotiations or a pre-existing business relationship with the person receiving the transmission.

Bill 118 1990

An Act respecting Unsolicited Facsimile Transmissions

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition

1. In this Act, "facsimile device" means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunication lines.

Prohibition

2.—(1) No person shall make an unsolicited transmission to a facsimile device for the purpose of encouraging a person to purchase or lease any personal property, real property or services.

Exception

(2) Subsection (1) does not apply to a person making a transmission in the course of,

(a) on-going negotiations with the person receiving the transmission; or

(b) a pre-existing business relationship with the person receiving the transmission.

Offences

3. Every person who contravenes subsection 2 (1) is guilty of an offence and on conviction is liable to a fine of not more than $1,000.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Unsolicited Facsimile Transmissions Act, 1990*.

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Bill 119

An Act to amend the Ontario Lottery Corporation Act

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics

LIBRARY

1st Reading April 25th, 1988
2nd Reading
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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EXPLANATORY NOTES

SECTION 1. The Bill re-enacts section 9 to provide that the net profits of the Ontario Lottery Corporation that are paid into the Consolidated Revenue Fund are available to be appropriated by the Legislature for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor. This part of this section repeats the provision now in section 9 for the availability of the net profits of the Corporation. In addition, the amendment provides that the Corporation's net profits are to be available for the activities of the Ontario Trillium Foundation. Any part of the net profits of the Corporation in a fiscal year that is not appropriated for the foregoing purposes is to be treated as part of the appropriation made by the Legislature in the fiscal year for the operation of hospitals.

SECTION 2. Unexpended money paid into the Consolidated Revenue Fund under section 9 of the *Ontario Lottery Corporation Act* in previous years will now be treated as part of the money appropriated by the Legislature for the operation of hospitals.

Bill 119 1989

An Act to amend the Ontario Lottery Corporation Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 9 of the *Ontario Lottery Corporation Act*, being chapter 344 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Net profits of the Corporation

9. The net profits of the Corporation after provision for prizes and the payment of expenses of operations shall be paid into the Consolidated Revenue Fund at such times and in such manner as the Lieutenant Governor in Council may direct, to be available for appropriation by the Legislature,

(a) for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor; and

(b) for the activities of the Ontario Trillium Foundation,

and the net profits of the Corporation paid into the Consolidated Revenue Fund in a fiscal year of Ontario and not so appropriated in the fiscal year shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature in the fiscal year for the operation of hospitals.

Transitional

2. The net profits of the Corporation that, pursuant to section 9 of the said Act, have been paid into the Consolidated Revenue Fund before the 1st day of April, 1988 and that have not been expended before that date shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature for the operation of hospitals in the fiscal year of Ontario in which this Act comes into force.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Ontario Lottery Corporation Amendment Act, 1989*.

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Bill 119

An Act to amend the Ontario Lottery Corporation Act

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics

LIBRARY
OCT 24 1989
University of Toronto

1st Reading April 25th, 1988
2nd Reading March 1st, 1989
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

(Reprinted as amended by the General Government Committee)

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EXPLANATORY NOTES

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Bill 119 1989

An Act to amend the Ontario Lottery Corporation Act

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(a) for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor; and

(b) for the activities of the Ontario Trillium Foundation,

and the net profits of the Corporation paid into the Consolidated Revenue Fund in a fiscal year of Ontario and not so appropriated in the fiscal year shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature in the fiscal year for the operation of hospitals.

Transitional

2. The net profits of the Corporation that, pursuant to section 9 of the said Act, have been paid into the Consolidated Revenue Fund before the 1st day of April, 1989 and that have not been expended before that date shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature for the operation of hospitals in the fiscal year of Ontario in which this Act comes into force.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Ontario Lottery Corporation Amendment Act, 1989*.

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2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 119

(Chapter 90
Statutes of Ontario, 1989)

An Act to amend the Ontario Lottery Corporation Act

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics

LIBRARY
JAN 10 1990
University of Toronto

1st Reading	April 25th, 1988
2nd Reading	March 1st, 1989
3rd Reading	December 19th, 1989
Royal Assent	December 19th, 1989

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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Bill 119 1989

An Act to amend the Ontario Lottery Corporation Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 9 of the *Ontario Lottery Corporation Act*, being chapter 344 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Net profits of the Corporation

9. The net profits of the Corporation after provision for prizes and the payment of expenses of operations shall be paid into the Consolidated Revenue Fund at such times and in such manner as the Lieutenant Governor in Council may direct, to be available for appropriation by the Legislature,

(a) for the promotion and development of physical fitness, sports, recreational and cultural activities and facilities therefor; and

(b) for the activities of the Ontario Trillium Foundation,

and the net profits of the Corporation paid into the Consolidated Revenue Fund in a fiscal year of Ontario and not so appropriated in the fiscal year shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature in the fiscal year for the operation of hospitals.

Transitional

2. The net profits of the Corporation that, pursuant to section 9 of the said Act, have been paid into the Consolidated Revenue Fund before the 1st day of April, 1989 and that have not been expended before that date shall be applied to, and accounted for in the Public Accounts of Ontario as part of, the money appropriated by the Legislature for the operation of hospitals in the fiscal year of Ontario in which this Act comes into force.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Ontario Lottery Corporation Amendment Act, 1989*.

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2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 120

An Act to amend the Public Vehicles Act

Mr. Kormos

LEGISLATIVE ASSEMBLY of Ontario

1st Reading March 29th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The Bill would prevent school bus passengers from standing in the aisles while the bus is in motion.

Subsection 23 (1) of the Act now reads:

(1) No driver or operator shall allow passengers to ride on the fenders or any other part of a public vehicle other than the seats thereof, except that a vehicle may carry as standing passengers in the aisles thereof not more than one-third the number of persons for which seats are provided.

Bill 120 1990

An Act to amend the Public Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. **Subsection 23 (1) of the *Public Vehicles Act*, being chapter 425 of the Revised Statutes of Ontario, 1980, is amended by inserting after "vehicle" where it appears the second time in the third line "other than a school bus as defined in section 151 of the *Highway Traffic Act*".**

2. **This Act comes into force on the day it receives Royal Assent.** Commencement

3. **The short title of this Act is the *Public Vehicles Amendment Act, 1990*.** Short title

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Bill 121

An Act for the Protection of Video Display Terminal Operators

Mr. Johnston
(Scarborough West)

LIBRARY
City of Toronto

1st Reading March 29th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

The purpose of the Bill is to protect the health of video display terminal operators by regulating the conditions of their employment and by setting the standards for the operation of terminals.

SECTIONS 1 and 2. Self-explanatory.

SECTION 3. The sale or leasing of terminals which emit any form of radiation other than visible light is prohibited. Radiation shielding is a requirement and universal radiation testing at point of production is mandatory. Records of tests are to be delivered to purchasers or lessees.

SECTION 4. Detailed standards are prescribed for the operation of terminals. A transitional provision gives one year's grace for terminals already in operation.

SECTION 5. Employers are required to have terminals tested, inspected and maintained and to have lighting surveys conducted semi-annually. Full records are to be kept and made available to operators and trade unions representing operators.

SECTION 6. Mandatory rest periods and maximum hours of operation are prescribed.

SECTION 7. Operators are permitted to cease working at terminals during pregnancy and while awaiting the results of pregnancy tests.

SECTION 8. An operator suffering from a medical condition that may be caused by operation of a terminal is permitted to cease working at a terminal until it has been inspected and any malfunction has been corrected.

SECTION 9. Operators who exercise their rights to request not to work at a terminal may be assigned reasonable alternative work at equal pay with no loss of seniority or benefits.

SECTION 10. Regular eye examinations at the employer's expense are prescribed. Operators are to be reimbursed for the cost of corrective lenses. The results of eye examinations are not to be used for personnel screening.

SECTION 11. Employers are required to provide operators with information about the possible health effects of working at terminals and with training in their safe operations.

SECTION 12. The use of terminals for individual monitoring of operators is prohibited.

SECTION 13. Bilateral health and safety committees with consultative powers are to be established, with powers to investigate conditions causing health effects, and with a right to actively participate in employer's decisions regarding introduction of technology into the workplace.

SECTION 14. Reprisals by employers are prohibited and grievances may be referred to the Ontario Labour Relations Board.

SECTION 15. The Bill adopts the inspection and enforcement provisions of the *Occupational Health and Safety Act*.

SECTION 16. The maximum fine will be $25,000.

SECTION 17. Self-explanatory.

Bill 121 1990

An Act for the Protection of Video Display Terminal Operators

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Definitions

"flicker rate" means the rate, measured in Hertz, at which images on the screen of a terminal are refreshed;

"health" means,

(a) the promotion and maintenance of the highest degree of physical, mental and social well-being of workers,

(b) the prevention among workers of ill health caused by their working conditions,

(c) the protection of workers in their employment from factors adverse to their health, and

(d) the placing and maintenance of workers in occupational environments which are adapted to their individual physiological and psychological conditions;

"health effect" means,

(a) a temporary or permanent deterioration of visual acuity,

(b) headaches,

(c) a burning sensation of the eyes,

(d) muscular and skeletal problems,

(e) change in colour perception, and

(f) such other health effect or effects as may be defined by the regulations;

R.S.O. 1980, c. 321

"inspector" means an inspector appointed under the *Occupational Health and Safety Act*;

"operator" means a person who does any work at a terminal;

"radiation" includes but is not limited to X-radiation, ultraviolet radiation, microwave radiation, ultrasound, infrared radiation, radio frequencies and static fields, and "radiation levels" has a corresponding meaning;

"terminal" includes any electronic video screen data presentation machine, commonly called a video display terminal or cathoderay tube, any plasma screen, and any liquid crystal display, but does not include a television or oscilloscope screen except to the extent that it is used as a terminal for the presentation of data;

R.S.O. 1980, c. 228

"trade union" means a trade union as defined in the *Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a workplace and includes an organization representing operators to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such operators.

Crown bound

2. This Act binds the Crown and any agency of the Crown.

Testing at point of sale

3.—(1) No person shall sell or lease a terminal in Ontario that has not been,

(a) tested to show that it emits no radiation, other than visible light; and

(b) equipped with radiation shields conforming to the regulations.

Record of tests

(2) Every person selling or leasing a terminal shall deliver a full record of tests conducted under clause (1) (a) to the purchaser or lessee of the terminal.

Duties of employer

4.—(1) No employer shall permit any operator employed by him or her to work at a terminal unless the following conditions are met:

1. The terminal shall be equipped with a detachable keyboard or other device readily adjustable by the operator.

2. The work station shall be equipped with a copy holder that is readily adjustable by the operator.

3. The terminal shall be located on an adjustable table and the work station shall be provided with a chair that is readily adjustable for seat and backrest heights, angle and backrest tension by the operator when seated.

4. The terminal shall be equipped with brightness and contrast controls that are readily adjustable by the operator.

5. The terminal shall have character size and colour conforming to the regulations.

6. The terminal shall be equipped with an anti-reflection filter.

7. Artificial and natural lighting in the office in which a terminal is located shall be readily adjustable, maximize the use of indirect lighting and minimize glare.

8. The terminal shall be provided with an individual lighting unit equipped with a dimmer switch and readily adjustable by the operator.

9. The terminal shall not have a flicker rate lower than that prescribed by the regulations.

10. The terminal shall not have its primary heat exhausts within 1.5 metres of the position normally occupied by the operator unless there are intervening ducts, walls or insulation.

11. The terminal shall not be situated in the same room as a printer unless the printer is equipped with acoustic protection so as to reduce noise levels to standard office noise levels.

12. The terminal shall not emit radiation other than visible light.

13. The terminal shall be equipped with radiation shields conforming to the regulations.

14. The terminal shall be equipped with an individual on-off switch controlled by the operator.

15. The terminal shall comply with any further standards prescribed by regulation.

Idem

(2) Where a terminal is in operation on the day before the day this Act comes into force, the employer shall comply with subsection (1) within one year of the day this Act comes into force.

Inspection and maintenance; testing for radiation levels

5.—(1) Every employer shall, at least once in each six-month period,

(a) cause each terminal in his or her possession to be,

(i) inspected and maintained by qualified persons, and

(ii) tested for compliance with paragraph 12 of subsection 4 (1);

(b) cause a full lighting survey of all working areas containing terminals to be carried out by qualified persons,

and shall cause full records of all inspections, maintenance, tests and surveys to be kept.

Access to records

(2) The records kept under subsection (1), subsection 3 (2) and section 8 shall be made available to all operators employed by the employer and to any representative selected by the trade union, if any, representing the operators.

Rest periods

6.—(1) Every employer of an operator shall allow the operator a fifteen-minute rest period for each hour that the operator works at a terminal and shall not cause the operator to work at a terminal continuously for more than one hour.

Hours of work

(2) No employer shall cause an operator to work at a terminal for more than four hours in any twenty-four hour period.

Idem

(3) An operator whose contract of employment provides for normal working hours exceeding the maximum permitted by subsection (2) has the right to perform reasonable alternative work without loss of pay, seniority or other benefits during the balance of his or her normal working hours.

Rest area

(4) Every employer of an operator shall provide a rest area that is not located adjacent to a terminal.

Pregnancy of operator

7.—(1) An operator,

(a) who believes she may be pregnant, may, until it has been established that she is not pregnant, subject to subsection (2); or

(b) who provides her employer with the certificate of a legally qualified medical practitioner indicating that she is pregnant may, during her pregnancy,

request not to work at a terminal, without loss of pay, seniority or other benefits, and such request will be granted.

Idem

(2) Where an operator requests not to work at a terminal under clause (1) (a), and does not provide her employer with the certificate referred to in clause (1) (b) by a day ninety days from the day of her refusal, the employer may require her to resume work at a terminal.

Refusal to work

8. An operator who provides his or her employer with the certificate of a legally qualified medical practitioner indicating that he or she suffers from any physical condition that may be caused by operation of a terminal may request not to work at a terminal, without loss of pay, seniority or other benefits, until that terminal has been,

(a) inspected by a qualified person and repaired if necessary;

(b) tested for radiation levels; and

(c) shown to comply with subsection 4 (1).

Alternative work

9. Upon an operator's request not to work at a terminal under subsection 7 (1) or section 8, the employer may require the operator to perform reasonable alternative work.

Eye testing

10.—(1) Every employer of an employee shall permit the employee to undergo an ophthalmological examination during working hours without loss of pay before becoming an operator.

Idem

(2) Every employer of an operator shall permit the operator to undergo at least one ophthalmological examination in each six-month period during working hours without loss of pay.

Idem

(3) The employer shall reimburse employees and operators for any costs in respect of such ophthalmological examinations which are not covered by the Ontario Health Insurance Plan

or by a group plan and for any lenses, including frames, prescribed for employees and operators.

Idem

(4) Where an operator has been assigned to work at a terminal before the day this Act comes into force, the employer shall permit the operator to undergo an ophthalmological examination during paid working hours within ninety days of the day this Act comes into force.

Results of test not to be used for personal screening

(5) No employer shall use the results of ophthalmological examinations to screen prospective employees.

Employees to be advised of results

(6) Employees shall be advised of results of each test under this section.

Operator education

11. Every employer of an operator shall,

(a) post a copy of this Act prominently where the operator is usually stationed;

(b) provide the operator with notice of health effects and with information about the means of alleviation of health effects; and

(c) provide the operator with training in the safe operation of terminals.

Limitation of individual monitoring

12. No employer of an operator shall use a terminal to monitor the productivity of an operator on an individual basis.

Health and safety committee

13.—(1) Every employer of an operator shall establish a health and safety committee consisting of at least two persons of whom at least half shall be operators to be selected by the operators they represent or, where there is a trade union or trade unions representing the operators, by the trade union or trade unions.

Duties of committee

(2) The health and safety committee shall,

(a) investigate conditions causing health effects in the workplace and make recommendations to the employer for their correction;

(b) participate in the employer's decisions for acquisition of equipment;

(c) investigate, record and communicate to the employer the concerns of operators regarding health effects and working conditions.

14.—(1) No employer or person acting on behalf of an employer shall, No discipline, dismissal, etc., by employer

(a) dismiss or threaten to dismiss an operator;

(b) discipline or suspend or threaten to discipline or suspend an operator;

(c) impose any penalty upon an operator; or

(d) intimidate or coerce an operator,

because the operator has acted in compliance with this Act or the regulations or an order made thereunder or has sought the enforcement of this Act or the regulations.

(2) Where an operator complains that an employer or person acting on behalf of an employer has contravened subsection (1), the operator may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply with all necessary modifications to the complaint. Arbitration

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection (2), and section 89 of the *Labour Relations Act*, except subsection (5), applies with all necessary modifications, as if such section, except subsection (5), is enacted in and forms part of this Act. Inquiry by Ontario Labour Relations Board R.S.O. 1980, c. 228

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), sections 102, 103, 106, 108 and 109 of the *Labour Relations Act* apply with all necessary modifications. Idem

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer. Onus of proof

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection (1). Jurisdiction when complaint by Crown employee

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), the Board determines that an operator has been discharged or otherwise disciplined by an employer for cause and the contract of Board may substitute penalty

employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

Exception
R.S.O. 1980, c. 381

(8) Notwithstanding subsection (2), a person who is subject to a rule or code of discipline under the *Police Act* shall have his or her complaint in relation to an alleged contravention of subsection (1) dealt with under that Act.

Enforcement
R.S.O. 1980, c. 321

15. Subsection 6 (2) and sections 23, 28, 29, 31, 32, 33, 34, 35 and 36 of the *Occupational Health and Safety Act* apply with all necessary modifications to the enforcement of this Act.

Offence

16. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than $25,000.

Regulations

17.—(1) The Lieutenant Governor in Council may make such regulations as are advisable to protect the health and safety of operators.

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

(a) prescribing character size and colour to be used in terminals;

(b) prescribing specifications for radiation shields to be installed or used in conjunction with terminals;

(c) prescribing a minimum flicker rate for terminals;

(d) respecting the testing of terminals for radiation levels;

(e) defining qualified persons;

(f) defining health effects;

(g) prescribing standards for terminals;

(h) authorizing the conducting of comprehensive epidemiological studies of operators and studies of the synergistic effects of exposure to radiation from terminals;

(i) authorizing research for the development of improved instruments for radiation analysis.

Commencement

18. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

19. The short title of this Act is the *VDT Operators' Safety Act, 1990*.

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2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 122

An Act to prevent unjust enrichment through the Financial Exploitation of Crime

Mr. Wildman

LIBRARY
JUN 6 1990
University of Toronto

1st Reading March 29th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The Bill makes moneys earned by accused criminals from the sale of their memoirs payable to the Criminal Injuries Compensation Board, which uses the funds received in each case to satisfy judgments obtained by victims of the crime.

Bill 122 1990

An Act to prevent unjust enrichment through the Financial Exploitation of Crime

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"Board" means the Criminal Injuries Compensation Board established under the *Compensation for Victims of Crime Act*; R.S.O. 1980, c. 82

"broadcast" means information transmitted by cables, wires, fibre-optic linkages, laser beams or any form of wireless radioelectric communication employing Hertzian waves;

"person accused or convicted of a crime" includes,

(a) a person who has been charged with a crime,

(b) a person who has been convicted of a crime, and

(c) a person who has admitted the commission of a crime for which the person has not been prosecuted;

"victim" means a person who suffers injury, damage or pecuniary loss as a direct result of a crime.

Payments to Board

2.—(1) Every person who makes a contract with a person accused or convicted of a crime, or with the person's agent or assignee, with respect to a book, magazine or newspaper article, broadcast, tape recording, phonograph recording, video recording, live presentation or other representation based upon or concerning the crime shall,

(a) provide the Board with a written copy of the contract; and

(b) pay to the Board any moneys which would, under the contract, be payable to the person accused or convicted of the crime, or an agent or nominee of the person.

List to be public

(2) The Board shall maintain a complete list of all persons in respect of whom it receives moneys under subsection (1) and shall make the list available to the public upon request.

Board to hold funds

3.—(1) The Board shall hold all moneys received under subsection 2 (1) in a special account, which may be an interest-bearing account, shall keep full records as to their source and disbursement and shall deal with the moneys in accordance with this Act.

Interest

(2) Interest earned on moneys received under subsection 2 (1) forms part of the moneys to be dealt with by the Board in accordance with this Act.

Notice to victims

4.—(1) Where the Board first receives moneys under subsection 2 (1) in respect of a particular crime, it shall publish, in a newspaper circulated in the community where the crime was committed or alleged to have been committed, at least once every week for four weeks, a notice advising victims of the crime that it holds the moneys and of their rights under this Act.

Idem

(2) The Board may give such further notice to victims as it considers advisable.

Victim may sue

1986, c. 4
R.S.O. 1980, c. 240

5.—(1) Despite subsection 61 (4) of the *Family Law Act, 1986* and section 45 of the *Limitations Act*, a victim may bring an action for the recovery of damages against the person accused or convicted of the crime within five years after the date on which the Board first received moneys under subsection 2 (1) in respect of the crime.

Notice to Board

(2) A victim who commences an action for damages against the person accused or convicted of the crime shall provide the Board with a copy of the statement of claim.

Payment to victim

6.—(1) Where a victim obtains judgment in an action for damages commenced against the person accused or convicted of the crime, the Board, after a day five years and six months after the day the Board first received moneys under this Act, shall pay the amount of the judgment and costs to the victim from the funds it holds under this Act.

Action for damages

(2) Where, on the day named in subsection (1), the Board has notice that a victim has commenced an action for damages

against the person accused or convicted of the crime and that the action has not been finally disposed of, the Board shall not make a payment under subsection (1) until the action has been finally disposed of.

When funds insufficient

(3) Where the aggregate amount of judgments and costs in respect of a particular crime exceeds the moneys received by the Board in respect of the crime, the Board shall distribute the moneys to the victims on a proportionate basis.

Release of funds where no victim sues

7.—(1) Where, on a day five years and six months after the day the Board first received moneys under this Act in respect of a particular crime, the Board has not been notified of an action commenced against the person accused or convicted of the crime during the five-year period described in subsection 5 (1), the Board shall release the moneys to the person accused or convicted of the crime.

Balance after judgments satisfied

(2) Where, after the Board has paid the full amounts of all judgments and costs payable to victims of a particular crime in accordance with this Act, the Board retains a balance of moneys received in respect of the crime, the Board shall pay the balance to the person accused or convicted of the crime.

Penalty

8. Every person who contravenes section 2 of this Act is guilty of an offence and upon conviction is liable to a fine not exceeding $5,000.

Board's power under R.S.O. 1980, c. 82

9. Nothing in this Act affects the power of the Board to award compensation to a victim under the *Compensation for Victims of Crime Act*.

Commencement

10. This Act comes into force on the day it receives Royal Assent.

Short title

11. The short title of this Act is the *Profits from Crime Act, 1990*.

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Publications

Bill 123 **Private Member's Bill**

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 123

An Act to amend the Assessment Act

Mr. Philip
(Etobicoke-Rexdale)

Legislature of Ontario

1st Reading March 29th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to exempt from taxation land rented or leased to a church or religious organization if the rental or lease agreement makes the church or religious organization liable for the taxes.

Bill 123 1990

An Act to amend the Assessment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subparagraph (b) of paragraph 3 of section 3 of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(b) The exemption from taxation under this paragraph does not apply to lands rented or leased to a church or religious organization unless the rental or lease agreement makes the church or religious organization liable for the payment of the taxes.

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Assessment Amendment Act, 1990*. Short title

AON
56

Bill 124

An Act to amend the Children's Law Reform Act

The Hon. I. Scott
Attorney General

LIBRARY

1st Reading April 26th, 1988
2nd Reading
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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Section 6 of the Bill adds section 35a to the Act, creating what is intended to be a speedy remedy for access difficulties.

If an existing court order provides for access to a child at specific times or on specific days (or if a separation agreement containing specific access provisions has been filed with the Provincial Court (Family Division) or the Unified Family Court), a person who claims that he or she was wrongfully denied access to the child may make a motion to the court.

The motion will be heard within ten days of being served. It can only be made within thirty days after the alleged denial of access. Normally the hearing will deal only with oral evidence relating directly to the alleged denial of access and the reasons for it. This is intended to ensure expeditious hearings.

If the court is satisfied that a wrongful denial of access took place, it may make a variety of orders, including an order for compensatory access, supervision or (if the parties agree) mediation. It is also possible for the court to order that the moving party be reimbursed for reasonable expenses actually incurred as a result of the denial of access.

Similar remedies are available for a person with custody who claims that a person with a right of access failed, without reasonable notice and excuse, to exercise the right of access or to return the child as the order requires.

Denial of access is wrongful unless it is justified by a legitimate reason. Criteria are provided to assist the court in determining whether a reason is legitimate.

The new remedy created in section 35a of the Act is not available if the access order or separation agreement fails to specify times or days when access is to be exercised. **Section 3 of the Bill** adds section 28a to the Act, to provide a mechanism for varying those orders and agreements by specifying times or days. Access provisions that have been varied in this way can then be enforced under new section 35a.

Section 4 of the Bill makes a related amendment to section 29 of the Act (which provides that custody and access orders may not be varied unless there has been a material change in circumstances). The amendment clarifies that this restriction does not apply to orders made under section 28a or 35a.

Section 1 of the Bill amends section 20 of the Act by adding a new subsection. Proposed subsection 20 (4a) provides that when parents have separated and one has custody and the other is entitled to access under the terms of a separation agreement or order, it is the duty of each to encourage and support the child's continuing parent-child relationship with the other.

Section 2 of the Bill amends section 24 of the Act to make it clear that the overriding principle of the best interests of the child, which governs applications under Part III of the Act (Custody, Access and Guardianship), also governs enforcement motions under proposed section 35a.

Subsection 24 (2) of the Act is re-enacted with minor wording changes and the addition of a new clause (d), stating that a person's ability to act as a parent is to be taken into account in custody and access proceedings. Subsection 24 (3) (past conduct) is replaced by new subsections (3) and (4). New subsection (3) specifically provides that the fact that a person has committed acts of domestic violence shall be considered in assessing his or her ability to act as a parent. New subsection (4) (based on existing subsection (3)) provides that other kinds of past conduct may be considered only if the court is satisfied that they are relevant to the person's ability to act as a parent.

Section 5 of the Bill rewords subsection 31 (10) of the Act (which deals with payment of mediators' fees) to match more closely the wording of subsection 3 (8) of the *Family*

Law Act, 1986. **Section 7 of the Bill** rewords subsection 36 (1) of the Act (which deals with restraining orders) to match more closely the wording of subsection 46 (1) of the 1986 Act.

Bill 124 1989

An Act to amend the Children's Law Reform Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 20 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(4a) Where the parents of a child live separate and apart and the child is in the custody of one of them and the other is entitled to access under the terms of a separation agreement or order, each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other. Duty of separated parents

2.—(1) Subsection 24 (1) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by inserting after "application" in the first line "or motion".

(2) Subsections 24 (2) and (3) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, are repealed and the following substituted therefor:

(2) In determining the best interests of a child for the purpose of an application or motion under this Part in respect of custody of or access to a child, a court shall consider all the child's needs and circumstances, including, Best interests of child

(a) the love, affection and emotional ties between the child and,

(i) each person seeking custody or access,

(ii) other members of the child's family residing with him or her, and

(iii) persons involved in the child's care and upbringing;

(b) the child's views and preferences, if they can reasonably be ascertained;

(c) the length of time the child has lived in a stable home environment;

(d) the ability of each person seeking custody or access to act as a parent;

(e) the ability and willingness of each person seeking custody to provide the child with guidance, education and necessities of life and to meet any special needs of the child;

(f) any plans proposed for the child's care and upbringing;

(g) the permanence and stability of the family unit with which it is proposed that the child will live; and

(h) the relationship, by blood or through an adoption order, between the child and each person who is a party to the application or motion.

Domestic violence to be considered

(3) In assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child, against his or her child's parent or against another member of the person's household.

Restrictions on consideration of other past conduct

(4) Other than the conduct referred to in subsection (3), a person's past conduct may be considered only if the court is satisfied that it is relevant to the person's ability to act as a parent.

3. The said Act is amended by adding thereto the following section:

Application to fix times or days of access

28a.—(1) If an order in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to a court to vary the order by specifying times or days.

Order

(2) The court may vary the order by specifying the times or days agreed to by the parties, or the times or days the court considers appropriate if the parties do not agree.

Separation agreements

1986, c. 4

(3) Subsection (1) also applies, with necessary modifications, in respect of a separation agreement under section 54 of the *Family Law Act, 1986* or a predecessor of that section that

provides for a person's access to a child without specifying times or days.

(4) Subsection (1) does not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act. Exception S.C. 1986, c. 4

4. Section 29 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(2) Subsection (1) does not apply in respect of orders made under subsection 28a (2) (fixing times or days of access) or 35a (2) or (6) (access enforcement, etc.). Exception

5. Subsection 31 (10) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

(10) The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem, serious financial hardship

6. The said Act is further amended by adding thereto the following section:

35a.—(1) A person in whose favour an order has been made for access to a child at specific times or on specific days and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied him or her access to the child may make a motion for relief under subsection (2) to the court that made the access order. Motion to enforce right of access

(2) If the court is satisfied that the responding party wrongfully denied the moving party access to the child, the court may, by order, Order for relief

(a) require the responding party to give the moving party compensatory access to the child for the period agreed to by the parties, or for the period the court considers appropriate if the parties do not agree;

(b) require supervision as described in section 35;

(c) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the wrongful denial of access;

(d) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Period of compensatory access

(3) A period of compensatory access shall not be longer than the period of access that was wrongfully denied.

What constitutes wrongful denial of access

(4) A denial of access is wrongful unless it is justified by a legitimate reason such as one of the following:

1. The responding party believed on reasonable grounds that the child might suffer physical or emotional harm if the right of access were exercised.

2. The responding party believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised.

3. The responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access.

4. The moving party failed to present himself or herself to exercise the right of access within one hour of the time specified in the order or the time otherwise agreed on by the parties.

5. The responding party believed on reasonable grounds that the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised.

6. The moving party did not satisfy written conditions concerning access that were agreed to by the parties or that form part of the order for access.

7. On numerous occasions during the preceding year, the moving party had, without reasonable notice and excuse, failed to exercise the right of access.

8. The moving party had informed the responding party that he or she would not seek to exercise the right of access on the occasion in question.

Motion re failure to exercise of right of access, etc.

(5) A person in whose favour an order has been made for custody of a child and who claims that a person in whose favour an order has been made for access to the child has, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, may make a motion for relief under subsection (6) to the court that made the access order.

Order for relief

(6) If the court is satisfied that the responding party, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, the court may, by order,

(a) require supervision as described in section 35;

(b) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the failure to exercise the right of access or to return the child as the order requires;

(c) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Speedy hearing

(7) A motion under subsection (1) or (5) shall be heard within ten days after it has been served.

Limitation

(8) A motion under subsection (1) or (5) shall not be made more than thirty days after the alleged wrongful denial or failure.

Oral evidence only

(9) The motion shall be determined on the basis of oral evidence only, unless the court gives leave to file an affidavit.

Scope of evidence at hearing limited

(10) At the hearing of the motion, unless the court orders otherwise, evidence shall be admitted only if it is directly related to,

(a) the alleged wrongful denial of access or failure to exercise the right of access or return the child as the order requires; or

(b) the responding party's reasons for the denial or failure.

Separation agreement may be filed with court

1986, c. 4

(11) A person who is a party to a separation agreement made under section 54 of the *Family Law Act, 1986* or a predecessor of that section may file the agreement with the clerk of the Provincial Court (Family Division) or of the Unified Family Court, together with the person's affidavit stating that the agreement is in effect and has not been set aside or varied by a court or agreement.

Effect of filing

(12) When a separation agreement providing for access to a child at specific times or on specific days is filed in this manner, subsections (1) and (5) apply as if the agreement were an order of the court where it is filed.

Motions made in bad faith

(13) If the court is satisfied that a person has made a motion under subsection (1) or (5) in bad faith, the court may prohibit him or her from making further motions without leave of the court.

Idem

S.C. 1986, c. 4

(14) Subsections (1) and (5) do not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act.

Application

1989, c....

(15) Subsections (1) and (5) do not apply in respect of a denial of access or a failure to exercise a right of access or to return a child as the order or agreement requires that takes place before the day section 6 of the *Children's Law Reform Amendment Act, 1989* comes into force.

7. Subsection 36 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 8, section 4, is repealed and the following substituted therefor:

Order restraining harassment

(1) On application, a court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the person to enter into the recognizance that the court considers appropriate.

Commencement

8. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

9. The short title of this Act is the *Children's Law Reform Amendment Act, 1989*.

KB
-B56

Bill 124

An Act to amend the Children's Law Reform Act

The Hon. I. Scott
Attorney General

LIBRARY
JAN 14 1989
University of Toronto

1st Reading April 26th, 1988
2nd Reading January 5th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Social Development Committee)

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Section 7 of the Bill adds section 35a to the Act, creating what is intended to be a speedy remedy for access difficulties.

If an existing court order provides for access to a child at specific times or on specific days (or if a separation agreement containing specific access provisions has been filed with the Provincial Court (Family Division) or the Unified Family Court), a person who claims that he or she was wrongfully denied access to the child may make a motion to the court.

The motion will be heard within ten days of being served. It can only be made within thirty days after the alleged denial of access. Normally the hearing will deal only with oral evidence relating directly to the alleged denial of access and the reasons for it. This is intended to ensure expeditious hearings.

If the court is satisfied that a wrongful denial of access took place, it may make a variety of orders, including an order for compensatory access, supervision or (if the parties agree) mediation. It is also possible for the court to order that the moving party be reimbursed for reasonable expenses actually incurred as a result of the denial of access.

Similar remedies are available for a person with custody who claims that a person with a right of access failed, without reasonable notice and excuse, to exercise the right of access or to return the child as the order requires.

Denial of access is wrongful unless it is justified by a legitimate reason. Criteria are provided to assist the court in determining whether a reason is legitimate.

The new remedy created in section 35a of the Act is not available if the access order or separation agreement fails to specify times or days when access is to be exercised. **Section 3 of the Bill** adds section 28a to the Act, to provide a mechanism for varying those orders and agreements by specifying times or days. Access provisions that have been varied in this way can then be enforced under new section 35a.

Section 4 of the Bill makes a related amendment to section 29 of the Act (which provides that custody and access orders may not be varied unless there has been a material change in circumstances). The amendment clarifies that this restriction does not apply to orders made under section 28a or 35a.

Section 1 of the Bill amends section 20 of the Act by adding a new subsection. Proposed subsection 20 (4a) provides that when parents have separated and one has custody and the other is entitled to access under the terms of a separation agreement or order, it is the duty of each to encourage and support the child's continuing parent-child relationship with the other.

Section 2 of the Bill amends section 24 of the Act to make it clear that the overriding principle of the best interests of the child, which governs applications under Part III of the Act (Custody, Access and Guardianship), also governs enforcement motions under proposed section 35a.

Subsection 24 (2) of the Act is re-enacted with minor wording changes and the addition of a new clause (d), stating that a person's ability to act as a parent is to be taken into account in custody and access proceedings. Subsection 24 (3) (past conduct) is replaced by new subsections (3) and (4). New subsection (3) specifically provides that the fact that a person has committed acts of domestic violence shall be considered in assessing his or her ability to act as a parent. New subsection (4) (based on existing subsection (3)) provides that other kinds of past conduct may be considered only if the court is satisfied that they are relevant to the person's ability to act as a parent.

Section 6 of the Bill rewords subsection 31 (10) of the Act (which deals with payment of mediators' fees) to match more closely the wording of subsection 3 (8) of the *Family*

Law Act, 1986. **Section 5 of the Bill** makes a similar change to subsection 30 (14) of the Act (which deals with payment of assessors' fees). **Section 8 of the Bill** rewords subsection 36 (1) of the Act (which deals with restraining orders) to match more closely the wording of subsection 46 (1) of the 1986 Act.

Bill 124 1989

An Act to amend the Children's Law Reform Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 20 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(4a) Where the parents of a child live separate and apart and the child is in the custody of one of them and the other is entitled to access under the terms of a separation agreement or order, each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other. Duty of separated parents

2.—(1) Subsection 24 (1) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by inserting after "application" in the first line "or motion".

(2) Subsections 24 (2) and (3) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, are repealed and the following substituted therefor:

(2) In determining the best interests of a child for the purpose of an application or motion under this Part in respect of custody of or access to a child, a court shall consider all the child's needs and circumstances, including, Best interests of child

(a) the love, affection and emotional ties between the child and,

(i) each person seeking custody or access,

(ii) other members of the child's family residing with him or her, and

(iii) persons involved in the child's care and upbringing;

(b) the child's views and preferences, if they can reasonably be ascertained;

(c) the length of time the child has lived in a stable home environment;

(d) the ability of each person seeking custody or access to act as a parent;

(e) the ability and willingness of each person seeking custody to provide the child with guidance, education and necessities of life and to meet any special needs of the child;

(f) any plans proposed for the child's care and upbringing;

(g) the permanence and stability of the family unit with which it is proposed that the child will live; and

(h) the relationship, by blood or through an adoption order, between the child and each person who is a party to the application or motion.

Domestic violence to be considered

(3) In assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child, against his or her child's parent or against another member of the person's household.

Restrictions on consideration of other past conduct

(4) Other than the conduct referred to in subsection (3), a person's past conduct may be considered only if the court is satisfied that it is relevant to the person's ability to act as a parent.

3. The said Act is amended by adding thereto the following section:

Application to fix times or days of access

28a.—(1) If an order in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to the court that made it to vary it by specifying times or days.

Order

(2) The court may vary the order by specifying the times or days agreed to by the parties, or the times or days the court considers appropriate if the parties do not agree.

Separation agreements

1986, c. 4

(3) Subsection (1) also applies, with necessary modifications, in respect of a separation agreement under section 54 of the *Family Law Act, 1986* or a predecessor of that section that

provides for a person's access to a child without specifying times or days.

(4) Subsection (1) does not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act. Exception S.C. 1986, c. 4

4. Section 29 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(2) Subsection (1) does not apply in respect of orders made under subsection 28a (2) (fixing times or days of access) or 35a (2) or (6) (access enforcement, etc.). Exception

5. Subsection 30 (14) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

(14) The court may require one party to pay all the fees and expenses of the person appointed under subsection (1) if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem, serious financial hardship

6. Subsection 31 (10) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

(10) The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem, serious financial hardship

7. The said Act is further amended by adding thereto the following section:

35a.—(1) A person in whose favour an order has been made for access to a child at specific times or on specific days and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied him or her access to the child may make a motion for relief under subsection (2) to the court that made the access order. Motion to enforce right of access

(2) If the court is satisfied that the responding party wrongfully denied the moving party access to the child, the court may, by order, Order for relief

(a) require the responding party to give the moving party compensatory access to the child for the period agreed to by the parties, or for the period

the court considers appropriate if the parties do not agree;

(b) require supervision as described in section 35;

(c) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the wrongful denial of access;

(d) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Period of compensatory access

(3) A period of compensatory access shall not be longer than the period of access that was wrongfully denied.

What constitutes wrongful denial of access

(4) A denial of access is wrongful unless it is justified by a legitimate reason such as one of the following:

1. The responding party believed on reasonable grounds that the child might suffer physical or emotional harm if the right of access were exercised.

2. The responding party believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised.

3. The responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access.

4. The moving party failed to present himself or herself to exercise the right of access within one hour of the time specified in the order or the time otherwise agreed on by the parties.

5. The responding party believed on reasonable grounds that the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised.

6. The moving party did not satisfy written conditions concerning access that were agreed to by the parties or that form part of the order for access.

7. On numerous occasions during the preceding year, the moving party had, without reasonable notice and excuse, failed to exercise the right of access.

8. The moving party had informed the responding party that he or she would not seek to exercise the right of access on the occasion in question.

Motion re failure to exercise of right of access, etc.

(5) A person in whose favour an order has been made for custody of a child and who claims that a person in whose favour an order has been made for access to the child has, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, may make a motion for relief under subsection (6) to the court that made the access order.

Order for relief

(6) If the court is satisfied that the responding party, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, the court may, by order,

(a) require supervision as described in section 35;

(b) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the failure to exercise the right of access or to return the child as the order requires;

(c) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Speedy hearing

(7) A motion under subsection (1) or (5) shall be heard within ten days after it has been served.

Limitation

(8) A motion under subsection (1) or (5) shall not be made more than thirty days after the alleged wrongful denial or failure.

Oral evidence only

(9) The motion shall be determined on the basis of oral evidence only, unless the court gives leave to file an affidavit.

Scope of evidence at hearing limited

(10) At the hearing of the motion, unless the court orders otherwise, evidence shall be admitted only if it is directly related to,

(a) the alleged wrongful denial of access or failure to exercise the right of access or return the child as the order requires; or

(b) the responding party's reasons for the denial or failure.

Separation agreement may be filed with court
1986, c. 4

(11) A person who is a party to a separation agreement made under section 54 of the *Family Law Act, 1986* or a predecessor of that section may file the agreement with the clerk of the Provincial Court (Family Division) or of the Unified Family Court, together with the person's affidavit stating that the agreement is in effect and has not been set aside or varied by a court or agreement.

Effect of filing

(12) When a separation agreement providing for access to a child at specific times or on specific days is filed in this manner, subsections (1) and (5) apply as if the agreement were an order of the court where it is filed.

Motions made in bad faith

(13) If the court is satisfied that a person has made a motion under subsection (1) or (5) in bad faith, the court may prohibit him or her from making further motions without leave of the court.

Idem
S.C. 1986, c. 4

(14) Subsections (1) and (5) do not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act.

Application
1989, c. ...

(15) Subsections (1) and (5) do not apply in respect of a denial of access or a failure to exercise a right of access or to return a child as the order or agreement requires that takes place before the day section 7 of the *Children's Law Reform Amendment Act, 1989* comes into force.

8. Subsection 36 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 8, section 4, is repealed and the following substituted therefor:

Order restraining harassment

(1) On application, a court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the person to enter into the recognizance that the court considers appropriate.

Commencement

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

10. The short title of this Act is the *Children's Law Reform Amendment Act, 1989*.

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Bill 124

(Chapter 22
Statutes of Ontario, 1989)

An Act to amend the Children's Law Reform Act

The Hon. I. Scott
Attorney General

1st Reading	April 26th, 1988
2nd Reading	January 5th, 1989
3rd Reading	June 19th, 1989
Royal Assent	June 20th, 1989

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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Bill 124 1989

An Act to amend the Children's Law Reform Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 20 of the *Children's Law Reform Act*, being chapter 68 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(4a) Where the parents of a child live separate and apart and the child is in the custody of one of them and the other is entitled to access under the terms of a separation agreement or order, each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other. Duty of separated parents

2.—(1) Subsection 24 (1) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by inserting after "application" in the first line "or motion".

(2) Subsections 24 (2) and (3) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, are repealed and the following substituted therefor:

(2) In determining the best interests of a child for the purpose of an application or motion under this Part in respect of custody of or access to a child, a court shall consider all the child's needs and circumstances, including, Best interests of child

(a) the love, affection and emotional ties between the child and,

(i) each person seeking custody or access,

(ii) other members of the child's family residing with him or her, and

(iii) persons involved in the child's care and upbringing;

(b) the child's views and preferences, if they can reasonably be ascertained;

(c) the length of time the child has lived in a stable home environment;

(d) the ability of each person seeking custody or access to act as a parent;

(e) the ability and willingness of each person seeking custody to provide the child with guidance, education and necessities of life and to meet any special needs of the child;

(f) any plans proposed for the child's care and upbringing;

(g) the permanence and stability of the family unit with which it is proposed that the child will live; and

(h) the relationship, by blood or through an adoption order, between the child and each person who is a party to the application or motion.

Domestic violence to be considered

(3) In assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child, against his or her child's parent or against another member of the person's household.

Restrictions on consideration of other past conduct

(4) Other than the conduct referred to in subsection (3), a person's past conduct may be considered only if the court is satisfied that it is relevant to the person's ability to act as a parent.

3. The said Act is amended by adding thereto the following section:

Application to fix times or days of access

28a.—(1) If an order in respect of access to a child provides for a person's access to the child without specifying times or days, a party to the order may apply to the court that made it to vary it by specifying times or days.

Order

(2) The court may vary the order by specifying the times or days agreed to by the parties, or the times or days the court considers appropriate if the parties do not agree.

Separation agreements

1986, c. 4

(3) Subsection (1) also applies, with necessary modifications, in respect of a separation agreement under section 54 of the *Family Law Act, 1986* or a predecessor of that section that

provides for a person's access to a child without specifying times or days.

(4) Subsection (1) does not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act. Exception S.C. 1986, c. 4

4. Section 29 of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is amended by adding thereto the following subsection:

(2) Subsection (1) does not apply in respect of orders made under subsection 28a (2) (fixing times or days of access) or 35a (2) or (6) (access enforcement, etc.). Exception

5. Subsection 30 (14) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

(14) The court may require one party to pay all the fees and expenses of the person appointed under subsection (1) if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem, serious financial hardship

6. Subsection 31 (10) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 20, section 1, is repealed and the following substituted therefor:

(10) The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship. Idem, serious financial hardship

7. The said Act is further amended by adding thereto the following section:

35a.—(1) A person in whose favour an order has been made for access to a child at specific times or on specific days and who claims that a person in whose favour an order has been made for custody of the child has wrongfully denied him or her access to the child may make a motion for relief under subsection (2) to the court that made the access order. Motion to enforce right of access

(2) If the court is satisfied that the responding party wrongfully denied the moving party access to the child, the court may, by order, Order for relief

(a) require the responding party to give the moving party compensatory access to the child for the period agreed to by the parties, or for the period

the court considers appropriate if the parties do not agree;

(b) require supervision as described in section 35;

(c) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the wrongful denial of access;

(d) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Period of compensatory access

(3) A period of compensatory access shall not be longer than the period of access that was wrongfully denied.

What constitutes wrongful denial of access

(4) A denial of access is wrongful unless it is justified by a legitimate reason such as one of the following:

1. The responding party believed on reasonable grounds that the child might suffer physical or emotional harm if the right of access were exercised.

2. The responding party believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised.

3. The responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access.

4. The moving party failed to present himself or herself to exercise the right of access within one hour of the time specified in the order or the time otherwise agreed on by the parties.

5. The responding party believed on reasonable grounds that the child was suffering from an illness of such a nature that it was not appropriate in the circumstances that the right of access be exercised.

6. The moving party did not satisfy written conditions concerning access that were agreed to by the parties or that form part of the order for access.

7. On numerous occasions during the preceding year, the moving party had, without reasonable notice and excuse, failed to exercise the right of access.

8. The moving party had informed the responding party that he or she would not seek to exercise the right of access on the occasion in question.

Motion re failure to exercise of right of access, etc.

(5) A person in whose favour an order has been made for custody of a child and who claims that a person in whose favour an order has been made for access to the child has, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, may make a motion for relief under subsection (6) to the court that made the access order.

Order for relief

(6) If the court is satisfied that the responding party, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires, the court may, by order,

(a) require supervision as described in section 35;

(b) require the responding party to reimburse the moving party for any reasonable expenses actually incurred as a result of the failure to exercise the right of access or to return the child as the order requires;

(c) appoint a mediator in accordance with section 31 as if the motion were an application for access.

Speedy hearing

(7) A motion under subsection (1) or (5) shall be heard within ten days after it has been served.

Limitation

(8) A motion under subsection (1) or (5) shall not be made more than thirty days after the alleged wrongful denial or failure.

Oral evidence only

(9) The motion shall be determined on the basis of oral evidence only, unless the court gives leave to file an affidavit.

Scope of evidence at hearing limited

(10) At the hearing of the motion, unless the court orders otherwise, evidence shall be admitted only if it is directly related to,

(a) the alleged wrongful denial of access or failure to exercise the right of access or return the child as the order requires; or

(b) the responding party's reasons for the denial or failure.

Separation agreement may be filed with court
1986, c. 4

(11) A person who is a party to a separation agreement made under section 54 of the *Family Law Act, 1986* or a predecessor of that section may file the agreement with the clerk of the Provincial Court (Family Division) or of the Unified Family Court, together with the person's affidavit stating that the agreement is in effect and has not been set aside or varied by a court or agreement.

Effect of filing

(12) When a separation agreement providing for access to a child at specific times or on specific days is filed in this manner, subsections (1) and (5) apply as if the agreement were an order of the court where it is filed.

Motions made in bad faith

(13) If the court is satisfied that a person has made a motion under subsection (1) or (5) in bad faith, the court may prohibit him or her from making further motions without leave of the court.

Idem
S.C. 1986, c. 4

(14) Subsections (1) and (5) do not apply in respect of orders made under the *Divorce Act, 1985* (Canada) or a predecessor of that Act.

Application
1989, c. 22

(15) Subsections (1) and (5) do not apply in respect of a denial of access or a failure to exercise a right of access or to return a child as the order or agreement requires that takes place before the day section 7 of the *Children's Law Reform Amendment Act, 1989* comes into force.

8. Subsection 36 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 8, section 4, is repealed and the following substituted therefor:

Order restraining harassment

(1) On application, a court may make an interim or final order restraining a person from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the person to enter into the recognizance that the court considers appropriate.

Commencement

9. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

10. The short title of this Act is the *Children's Law Reform Amendment Act, 1989*.

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2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 125

An Act respecting a Register of Ontario Land Information

Mr. Kormos

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1st Reading March 29th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The Bill would authorize the creation of a public register showing the ownership of all privately held land in Ontario, the use of the land, and whether its owner is a resident or non-resident of Canada. Every owner, purchaser or vendor of an interest in land in Ontario would be subject to a reporting requirement.

Bill 125 **1990**

An Act respecting a Register of Ontario Land Information

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act, Interpretation

(a) "Director" means the Director appointed under this Act;

(b) "interest in land" means the fee or the equity of redemption in or a power or right to grant, assign or exercise a power of appointment in respect of land;

(c) "non-resident corporation" means a corporation, regardless of the jurisdiction in which it was formed or organized, that,

(i) is controlled directly or indirectly by one or more non-resident persons,

(ii) has issued shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of shareholders to one or more non-resident persons,

(iii) has issued shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of shareholders to any one non-resident person,

(iv) has a board of directors, one-half or more of which is composed of non-resident persons, or

(v) in the case of a corporation without share capital, has a membership, one-half or more of which is composed of non-resident persons;

(d) "non-resident person" means,

(i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor a person who has been lawfully admitted to Canada for permanent residence in Canada,

(ii) a non-resident corporation,

(iii) a partnership, syndicate, association or other organization of which one-half or more of the members are non-resident persons or in which interests representing 50 per cent or more of the total value of the property of the partnership, syndicate, association or organization are beneficially owned by non-resident persons, or

(iv) a trust in which non-resident persons within the meaning of subclause (i), (ii) or (iii) hold 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom;

(e) "prescribed" means prescribed by the regulations made under this Act.

Ordinarily resident defined

(2) For the purpose of clause (1) (d), an individual shall be considered to be ordinarily resident in Canada if at the time the expression is being applied, the individual,

(a) has sojourned in Canada during the next preceding twenty-four months for a period of, or periods the aggregate of which is, 366 days or more;

(b) is a member of the Canadian Forces required to reside outside Canada;

(c) is an ambassador, minister, high commissioner, officer or servant of Canada, or is an agent-general, officer or servant of a province of Canada, and resided in Canada immediately prior to appointment or employment by Canada or a province of Canada or is entitled to receive representation allowances;

(d) is performing services in a country other than Canada under an international development assistance program of the Government of Canada that is

prescribed for the purposes of paragraph 250 (1) (*d*) of the *Income Tax Act* (Canada), and resided in Canada at any time in the three-month period preceding the day on which such services commenced; or R.S.C. 1952, c. 148

(e) resides outside Canada and is the spouse or child of, and is living with, an individual described in clause (b), (c) or (d).

Report re ownership and use

2.—(1) Every person who holds an interest in land in Ontario on the 31st day of December, 1985 shall, on or before the 1st day of April, 1986, file with the Director a report in the prescribed form,

(a) setting out the person's interest in the land;

(b) describing the use of the land;

(c) declaring whether the person is a non-resident person; and

(d) setting out the municipal address and a brief description of the land.

Idem

(2) Every person who acquires an interest in land in Ontario, whether by way of a conveyance, purchase of shares in a corporation that has such an interest, or otherwise, on or after the 31st day of December, 1985, shall, within ninety days after the date of the conveyance or acquisition, file with the Director a report in the prescribed form,

(a) setting out the person's interest in the land;

(b) describing the use of the land;

(c) declaring whether the person is a non-resident person; and

(d) setting out the municipal address and a brief description of the land.

Notice re disposition

(3) Every person who disposes of or conveys away an interest in land in Ontario after filing a report with respect to the land under subsection (1) or (2) shall, within ninety days after the date of the disposition or conveyance, file with the Director a notice in the prescribed form.

Where registration report not required

(4) Where a person files a report or notice under this section respecting an interest in land and the report or notice or accompanying material,

(a) provides information on other persons who are also required to file a report or notice respecting the land; and

(b) the information supplied under clause (a) is equivalent in nature and extent to the information required of a person filing a report or notice,

those other persons are not required to file a separate registration report respecting that land.

When resident deemed to be non-resident

3. For the purposes of this Act, where a person who is a resident of Canada has acquired or acquires an interest in land and knowingly holds that interest on behalf of a non-resident person, by agreement or otherwise, the first-named person shall be deemed to be a non-resident person in respect of that interest.

Contents of report and notice

4. Every report and notice shall set forth the prescribed information.

Appointment of Director

5. The Minister of Municipal Affairs may appoint a Director of a branch of the Ministry to administer and enforce this Act.

False information

6. No person shall furnish false information in any report or notice filed under this Act.

Offence

7. Every person who contravenes any provision of this Act or the regulations and every director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Public register

8. The Director shall maintain all reports and notices filed under section 2 in a register and shall make the register available for inspection and copying by the public at the Director's office during ordinary business hours.

Regulations

9. The Lieutenant Governor in Council may make regulations,

(a) prescribing the form of and the information to be contained in a report under subsection 2 (1) or (2);

(b) prescribing the form of and the information to be contained in a notice under subsection 2 (3);

(c) prescribing forms other than those mentioned in clauses (a) and (b) and providing for their use.

Commencement

10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

11. The short title of this Act is the *Ontario Land Information Act, 1990*.

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-B56

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 126

An Act to amend the Highway Traffic Act

Mr. Wildman

1st Reading March 29th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The Bill prohibits the use of spare tires that are not of the same type or size as the other tires on a vehicle.

Bill 126 1990

An Act to amend the Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 51 of the *Highway Traffic Act* is amended by adding the following subsections: R.S.O. 1980, c. 198

(4) No vehicle shall be operated on any highway if its tires are installed in a combination of construction types or sizes on an axle, except where such types or sizes are equivalent by tire industry standards. Combination of types or sizes

(5) Subsection (4) applies in respect of all tires, including temporary use spare tires. Idem

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Highway Traffic Amendment Act, 1990*. Short title

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-B56

Bill 127

An Act to amend the Homes for the Aged and Rest Homes Act

Mr. Cooke
(Windsor-Riverside)

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1st Reading March 29th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to prevent the discharge of a resident from a rest home or a home for the aged without the approval of a physician independent of the home and without ensuring that there are suitable alternative accommodations for the resident. The amendment is similar to the requirements for discharge from a nursing home under the regulations to the *Nursing Homes Act*.

Bill 127 1990

An Act to amend the Homes for the Aged and Rest Homes Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 19 of the *Homes for the Aged and Rest Homes Act*, being chapter 203 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Discharge of residents from homes

19.—(1) Except as provided in subsection (3), no resident shall be discharged from a home or joint home unless,

(a) a discharge order by a physician other than the physician of the home or joint home has been recorded on the medical record;

(b) arrangements have been made to provide services and accommodation suitable to meet the needs of the resident being discharged; and

(c) the resident and the resident's next-of-kin or legal representative, as the case may be, have been notified of the proposed discharge twenty-four hours prior to the discharge of the resident from the nursing home.

Exception

(2) When a resident of a home or joint home is to be admitted to a hospital and circumstances do not permit the twenty-four hours notice required under clause (1) (c), the next-of-kin or legal representative shall be notified as soon as possible of the proposed discharge of the resident.

Consent

(3) A resident who wishes to terminate arrangements for care with a home or joint home may be discharged only after the resident, or where he or she lacks the mental capacity, the resident's legal representative has signed a statement declaring that the resident wishes to leave the nursing home and the res-

ident's next-of-kin or legal representative, as the case may be, has been notified twenty-four hours prior to the discharge.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Homes for the Aged and Rest Homes Amendment Act, 1990*.

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-B56

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 128

An Act respecting Flag Day

Mr. Wildman

LIBRARY
APR
University of Toronto

1st Reading April 2nd, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to establish Flag Day as a public holiday to commemorate the national flag of Canada. Flag Day would be observed on the second Monday of February in each year.

Sections 2 to 4 of the Bill make consequential amendments to several Acts.

Bill 128 1990

An Act respecting Flag Day

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Flag Day, being the second Monday of February in any year, is proclaimed as a public holiday to commemorate the national flag of Canada. Flag Day

COMPLEMENTARY AMENDMENTS

2. Clause 1 (l) of the *Employment Standards Act* is amended by inserting after "New Year's Day" in the first line "Flag Day". R.S.O. 1980, c. 137

3.—(1) Section 30 of the *Interpretation Act*, as amended by the Statutes of Ontario, 1984, chapter 11, section 184 and 1989, chapter 56, section 20, is further amended by adding the following paragraph: R.S.O. 1980, c. 219

6a. "Flag Day" means the second Monday of February.

(2) Paragraph 11 of section 30 of the Act is amended by inserting after "New Year's Day" in the first line "Flag Day".

4. Clause 1 (1) (a) of the *Retail Business Holidays Act*, as re-enacted by the Statutes of Ontario, 1989, chapter 3, section 1, is amended by adding the following subclause: R.S.O. 1980, c. 453

(ia) "Flag Day".

5. This Act comes into force on the day it receives Royal Assent. Commencement

6. The short title of this Act is the *Flag Day Act, 1990*. Short title

Bill 129

An Act to regulate the Care of Animals kept for Exhibition or Entertainment

Mr. Philip
(Etobicoke-Rexdale)

1st Reading May 5th, 1988
2nd Reading
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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EXPLANATORY NOTES

The Bill requires persons to acquire a licence to operate a garden, park or other establishment that keeps animals for the purpose of exhibition to or entertainment of the public. The Bill does not apply to circuses or pet shops.

Applicants for a licence are required to submit a detailed plan demonstrating how they propose to care for the animals and insuring that they have adequate financing to properly care for the animals.

The Bill sets out standards for providing and caring for animals.

The Bill provides for inspection of the premises of such establishments.

A person who contravenes a provision of the Act is subject to a fine or to confiscation of the person's animals or to both. In addition, the Minister may revoke a licence under specified circumstances.

Bill 129 1989

An Act to regulate the Care of Animals kept for Exhibition or Entertainment

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"inspector" means an inspector appointed under section 8 of this Act;

"licensee" means a person who is the holder of a licence under this Act;

"Minister" means the Minister of Natural Resources;

"regulations" means the regulations made under this Act;

"zoo" means a garden, park or other establishment where animals are kept for the purpose of exhibition to or entertainment of the public and does not include a circus or a pet shop.

Administration of Act

2. The Minister is responsible for the administration and enforcement of this Act and the regulations.

Licence required

3.—(1) No person shall establish, operate or maintain a zoo except under the authority of a licence issued by the Minister under this Act.

Transition

(2) Subsection (1) does not apply to a person who was operating and maintaining a zoo immediately before this Act comes into force until three months after this Act comes into force.

Issuance of licence

4.—(1) Subject to subsection (3), any person is entitled to be issued a licence to establish, operate or maintain a zoo if the person,

(a) applies for the licence in accordance with this Act and the regulations;

(b) meets the requirements of this Act and the regulations; and

(c) pays the prescribed fee.

Plan required

(2) An application shall include a detailed plan for adequately caring for the animals in the zoo.

Grounds for refusal

(3) The Minister may refuse to issue a licence where, in the Minister's opinion,

(a) the proposed zoo or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law;

(b) the plan referred to in subsection (2) is not adequate to care for the animals;

(c) the applicant does not have the financial resources to adequately carry out the plan referred to in subsection (2);

(d) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo will not be operated in accordance with the law and with honesty and integrity;

(e) the applicant, or where the applicant is a corporation, its officers or directors, are not competent to operate a zoo in a responsible manner in accordance with this Act and the regulations; or

(f) the past conduct of the applicant, or where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo will be operated in a manner that is prejudicial to the health, safety or welfare of the animals or of the public.

Conditions

(4) The Minister may attach any conditions to a licence if he or she reasonably considers it advisable to do so to carry out the purposes of this Act.

Vary conditions

5. The Minister may vary any conditions of a licence if he or she believes on reasonable grounds that it is advisable to do so to carry out the purposes of this Act.

6. The Minister may revoke a licence where, Revocation of licence

(a) the licensee is in contravention of this Act or the regulations or any other Act or regulation or municipal by-law that applies to the zoo;

(b) there is a breach of a condition of the licence;

(c) the licensee has not followed the plan referred to in subsection 4 (2);

(d) any person has made a false statement in the application for the licence or in any other information required to be furnished by this Act or the regulations;

(e) the conduct of the licensee, or where the licensee is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo is not being or will not be operated in accordance with the law and with honesty and integrity;

(f) the conduct of the licensee, or where the licensee is a corporation, its officers or directors, affords reasonable grounds for belief that the licensee is not competent to operate the zoo in a responsible manner in accordance with this Act and the regulations; or

(g) the conduct of the licensee, or where the licensee is a corporation, of its officers or directors, affords reasonable grounds for belief that the zoo is being or will be operated in a manner that is prejudicial to the health, safety or welfare of the animals or of the public.

7.—(1) A person who operates and maintains a zoo shall ensure that each animal in the zoo receives, in accordance with the regulations, care appropriate to its individual needs and the specific needs of its species, including, Standards of care

(a) an appropriate diet and appropriate amounts of drinking water;

(b) the provision of appropriate space, privacy and contact with other animals;

(c) an opportunity for the appropriate physical exercise;

(d) the provision of a physicial environment appropriate to its needs, whether at the licensee's premises or away from them; and

(e) the provision of appropriate professional veterinary care.

Facilities for veterinary services

(2) A person who operates and maintains a zoo shall ensure that the zoo contains or has access to facilities for treating animals in need of veterinary services in accordance with the regulations.

Protection of public, employees

(3) A person who operates and maintains a zoo shall ensure in accordance with the regulations that there are barriers between the public and the animals that are adequate to protect the public and that the feeding and watering areas for the animals are adequate to protect the animals' caretakers.

Complaints to be investigated

(4) The Minister shall cause any complaint made concerning the operation of a zoo to be investigated within seven days of receipt of the complaint.

Appointment of inspectors

8.—(1) The Minister may appoint such inspectors as are necessary for the purposes of this Act and the regulations and such appointments shall be in writing.

Certificate of appointment

(2) The Minister shall issue to every inspector a certificate of appointment and every inspector, in the execution of his or her duties under this Act and the regulations, shall produce the certificate of appointment upon request.

Inspection

9.—(1) An inspector without a warrant at any time may enter upon the premises, including the business premises, of a zoo that is licensed under this Act to make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

Idem

(2) Where an inspector believes on reasonable and probable grounds that any premises are being used as a zoo without being licensed, in contravention of this Act, the inspector without a warrant at any reasonable time may enter upon such premises to make an inspection for the purpose of determining whether or not the premises are being so used.

Warrant

(3) No inspector shall enter any room or place that is actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 142 of the *Provincial Offences Act*.

R.S.O. 1980, c. 400

Powers on inspection

(4) Upon an inspection under this section, the inspector,

(a) is entitled at any reasonable time to free access to all records that are relevant for the purposes of the inspection or required to be kept under this Act or the regulations;

(b) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove any record referred to in clause (a) in order to make a copy of it, provided that the copying is carried out with reasonable dispatch and the record is promptly thereafter returned to the person whose premises are being inspected;

(c) may inspect the premises and operations;

(d) may examine or test samples of substances to ensure that this Act and the regulations are being complied with; and

(e) upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, may remove a substance or a sample of a substance referred to in clause (d) in order to conduct further tests, for any purpose reasonably necessary to carry out effectively the purposes of this Act.

Not to obstruct inspector

(5) No person shall obstruct an inspector or withhold, destroy, conceal or refuse to furnish any information or thing required by the inspector for the purposes of an inspection.

Admissibility of copies

(6) Any copy made as provided in subsection (4) and purporting to be certified by an inspector is admissible in evidence in any prosecution as proof in the absence of evidence to the contrary of the original.

Admissibility of test results

(7) A certificate as to the result of any test that contains the name and a statement of the qualifications of the person who conducted the test and purports to be signed by that person is, without proof of the office or signature of that person, receivable in evidence as proof in the absence of evidence to the contrary of the facts stated in the certificate for all purposes in any prosecution if it has been served on any defendant to the prosecution within a reasonable time before the trial in which it is to be adduced.

Penalty

10.—(1) Any person who contravenes a provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than $2,000 for a first offence and not more than $5,000 for each subsequent offence.

Idem, corporation

(2) The minimum fine under subsection (1) for a corporation is $5,000 for a first offence and $25,000 for each subsequent offence.

Confiscate animals

(3) The Minister may confiscate any animals of a person convicted of an offence under this section.

Regulations

11.—(1) The Lieutenant Governor in Council may make regulations,

(a) respecting the information that is to be furnished in a plan under section 4;

(b) governing the feeding and provision of drinking water to animals;

(c) governing the space, privacy and contact with other animals to be provided;

(d) governing the opportunity for physical exercise;

(e) governing the provision of an appropriate physical environment for the animals;

(f) governing facilities for treating animals;

(g) governing barriers to protect the public and the protection of caretakers;

(h) requiring periodic inspections of zoos by inspectors and specifying the period;

(i) governing the reports that shall be made to the Minister by licensees;

(j) providing for the issuing of licences and the fees payable for them;

(k) exempting designated zoos from specified provisions of this Act or the regulations;

(l) prescribing forms for the purposes of this Act and providing for their use.

Idem

(2) A regulation made under clauses (1) (b) to (g) may be general or specific in its application.

12. This Act comes into force on the day it receives Royal Assent. Commencement

13. The short title of this Act is the *Zoo Licensing Act, 1989*. Short title

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 130

An Act to amend the Energy Act

Mr. Wildman



1st Reading April 3rd, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to include wood-burning furnaces, stoves and other devices in the definition of an "appliance" and, accordingly, make them subject to regulation under the Act.

Bill 130 1990

An Act to amend the Energy Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (a) of the *Energy Act* is repealed and the following substituted: R.S.O. 1980, c. 139

(a) "appliance" means,

(i) a furnace, stove or device capable of burning wood, or

(ii) a device that uses a hydrocarbon,

and includes all valves, fittings, controls and components attached or to be attached thereto.

2. This Act comes into force on the day it receives Royal Assent. Commencement

3. The short title of this Act is the *Energy Amendment Act, 1990*. Short title

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Bill 131

An Act to amend the Powers of Attorney Act

Mr. Sterling

LIBRARY
University of Toronto

1st Reading April 3rd, 1990

2nd Reading

3rd Reading

Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to provide for a durable power of attorney with respect to consent and withdrawal of consent to medical treatment.

Bill 131 1990

An Act to amend the Powers of Attorney Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 5 of the *Powers of Attorney Act*, being chapter 386 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Idem

(2) A provision in a power of attorney may authorize another person to give consent or directions respecting,

(a) the medical treatment of the person giving the authorization; or

(b) the withdrawal of medical treatment for the person giving the authorization.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Powers of Attorney Amendment Act, 1990*.

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2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 132

An Act respecting Natural Death

Mr. Sterling



1st Reading April 3rd, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

The purpose of the Bill is to recognize the right of an adult person to make a written declaration (living will) that instructs a physician or other health-care provider to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

Criteria are established to execute a valid living will and to revoke it.

The Bill protects from civil liability and disciplinary action physicians and other health-care providers who withhold or withdraw life-sustaining procedures in accordance with a patient's wishes as set out in a living will.

Penalties are provided in situations where the physician or other health-care provider refuses to follow the living will and also refuses to make reasonable effort to transfer the patient to another physician or health-care provider willing to follow the living will.

Bill 132 1990

An Act respecting Natural Death

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Definitions

"life-sustaining procedure" means a medical procedure or treatment that is performed or applied for the purpose of postponing the moment of death, but does not include a medical procedure or treatment that is performed or applied for the purpose of alleviating pain;

"living will" means a written declaration that sets out that the person executing the declaration does not wish to have a life-sustaining procedure carried out on him or her if the person is suffering from a terminal condition and is no longer mentally competent;

"mentally competent" means able to understand,

(a) the subject-matter in respect of which consent may be given or withheld, and

(b) the consequences of giving or withholding consent;

"physician" means a legally qualified medical practitioner;

"terminal condition" means an incurable or irreversible condition such that death is imminent and may only be postponed by the performance of a life-sustaining procedure.

2. A person who attains the age of majority and is mentally competent may execute a living will. Living will

3.—(1) The living will of a person is valid for the purposes of this Act if, Validity of living will

(a) it is in writing;

(b) it is signed by the person;

(c) it is signed by the person in the presence of two or more witnesses who are present at the same time;

(d) it is signed by two or more of the witnesses in the presence of the person; and

(e) it is dated on the day it is executed.

Witnesses as beneficiaries

(2) The living will of a person is not valid if the witnesses are related to the person, are potential beneficiaries of the person's estate or are financially responsible for the person.

Pregnancy

(3) The living will of a person is not valid while the person is pregnant.

Revocation

4.—(1) The living will of a person is revoked if the person,

(a) destroys, defaces or directs another person who is not related to him or her to destroy or deface the living will with the intention of revoking it;

(b) signs a document directing the revocation of the living will before one witness who is not related to the person; or

(c) indicates to another person who is not related to him or her, orally or by other non-written means of communication, an intention to revoke it.

Application of subs. (1)

(2) Subsection (1) applies despite the fact that the person was not mentally competent at the time of the revocation.

When living will effective

5.—(1) The living will of a person takes effect for the purposes of this Act when it is given to a physician who is responsible for the person's medical care and treatment.

To be included in record

(2) The physician who is given the living will of a person shall record its existence in the person's medical record and insert it in the person's medical record.

Physician notified of revocation

(3) The living will of a person that is given to a physician ceases to be effective for the purposes of this Act when the physician or another physician who is responsible for the person's medical care and treatment is notified that the living will is revoked under subsection 4 (1).

To be included in the record

(4) A physician who is notified under subsection (3) that the living will of a person is revoked shall immediately record

the fact in the person's medical record and shall immediately remove the living will from the medical record.

Liability

6.—(1) A person is not liable for damages to a person who executes a living will or subject to disciplinary action for the withdrawal or withholding of a life-sustaining procedure under the living will.

Idem

(2) Subsection (1) applies even if the living will is not valid, if the person acted in accordance with the living will believing it to be valid.

Transfer of care and treatment

(3) A health-care provider who is responsible for the medical care and treatment of a person and who is unwilling to comply with the living will of the person shall, as promptly as is practicable, take all reasonable steps to transfer the care and treatment of the person to another health-care provider who is willing to comply with the living will.

Life insurance

7. A death that occurs because of the withdrawal or withholding of a life-sustaining procedure under a living will shall be deemed not to be a suicide or self-induced death for the purposes of any legal document.

Offence

8.—(1) Except as provided in clause 4 (1) (a) and subsection 5 (4), a person who knowingly conceals, defaces or destroys another person's living will is guilty of an offence.

Idem

(2) A health-care provider who is unwilling to comply with a living will and who does not promptly act to take all reasonable steps to transfer the care and treatment of the person to another health-care provider is guilty of an offence.

Idem

(3) A person who is convicted of an offence under this Act is liable to a fine of not more than $1,000 and to imprisonment for a term of not more than one year.

No presumption created

9.—(1) This Act does not create a presumption as to the intention or wishes of a person who has revoked or has not executed a living will.

No obligations created

(2) This Act does not impose an obligation to perform a life-sustaining procedure if the obligation does not otherwise exist at law.

Commencement

10. This Act comes into force on the day it receives Royal Assent.

Short title

11. The short title of this Act is the *Natural Death Act, 1990*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 133

An Act to amend the Labour Relations Act

Mr. Mackenzie

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APR 2 5 1990
University of Toronto

1st Reading April 5th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to prevent the hiring of strikebreakers and to control access to a work premises that is affected by a strike or lock-out. The Bill prohibits an employer from hiring or using the services of a person to do the work of an employee who is on strike or locked out unless that person is specifically authorized to do so. Similarly, when a picket line is established at a place of access to a work premises, access is limited to persons specifically authorized by the Bill. The Bill repeals a provision of the Act dealing with professional strikebreakers and strike-related misconduct.

Bill 133 1990

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Labour Relations Act* is amended by adding the following section: R.S.O. 1980, c. 228

67a.—(1) In this section, Definitions

"employer" includes an employers' organization and a person acting on behalf of an employer or an employers' organization;

"legal picket line" means a moving formation of two or more persons who are members of a certified bargaining unit and who by means of signs or posters give notice that the certified bargaining unit is on strike or locked out.

(2) No employer shall employ or use the services of any person to perform the work of an employee who is exercising a legal right to strike or who is locked out unless, Unlawful employment

(a) the person ordinarily exercises managerial or supervisory functions and was a full-time employee of the employer on the day the strike or lock-out commenced; or

(b) the person is authorized to perform the work by agreement between the employer and representatives of the certified bargaining unit that is on strike or locked out.

(3) Where a legal picket line is formed in support of a lawful strike or lock-out at a place of access to a work premises, no person shall enter the premises unless, Unlawful entry

(a) the person ordinarily exercises managerial and supervisory functions;

(b) the person is a member of a certified bargaining unit that is not on strike or locked out and is not engaged in performing the work of an employee who is on strike or locked out;

(c) the person is a non-union employee who was a full-time employee of the employer on the day the strike or lock-out was commenced and is not engaged in performing the work of an employee who is on strike or locked out;

(d) the person requires access to the work premises for the purpose of providing emergency services;

(e) the person is authorized to enter the work premises by agreement between the employer and representatives of the bargaining unit that is on strike or locked out.

Duty of police officer

(4) Where a picket line is formed in support of a lawful strike or lock-out at a place of access to a work premises, it is the duty of every police officer stationed at that place to ensure that no person other than a person authorized under subsection (3) enters the work premises.

Trespass

(5) A person who enters the work premises contrary to subsection (3) or who, upon gaining entry, performs work contrary to subsection (2), commits a trespass and is liable to proceedings under the *Trespass to Property Act*.

R.S.O. 1980, c. 511

2. Section 71a of the Act, as enacted by the Statutes of Ontario, 1983, chapter 42, section 1, is repealed.

Commencement

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Labour Relations Amendment Act, 1990*.

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Bill 134

An Act to regulate the Sale of Tobacco

Mr. Allen



1st Reading April 5th, 1990

2nd Reading

3rd Reading

Royal Assent

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EXPLANATORY NOTE

The proposed Bill prohibits the selling of tobacco without a licence issued under the Bill and prohibits the sale of tobacco to minors. The Bill repeals the *Minors' Protection Act*.

Bill 134 1990

An Act to regulate the Sale of Tobacco

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

"Minister" means the Minister of Consumer and Commercial Relations;

"minor" means a person under the age of eighteen;

"prescribed" means prescribed by the regulations;

"regulations" means the regulations made under this Act;

"tobacco" means tobacco in any form in which it is used or consumed, and includes snuff.

Licence to sell

2. No person shall sell tobacco at retail unless the person has applied for, and the Minister has issued to the person, a licence to sell tobacco.

Licence to sell, vending machine

3. No person shall maintain a tobacco vending machine unless the person has applied for, and the Minister has issued to the person, a licence to sell tobacco.

Prohibition, sale to minor

4.—(1) No person shall either directly or indirectly sell or give or furnish tobacco to a minor.

Idem

(2) No person shall sell or permit the sale of tobacco from a vending machine maintained by the person to a minor.

Power of Minister

5. The Minister may, after giving a person an opportunity to be heard, refuse to issue a licence to the person if the person or an employee of the person has contravened subsection 4 (1) or (2).

Offence

6.—(1) A person who contravenes section 2 or 3 is guilty of an offence and on conviction is liable to a fine of not more than $1,000.

Idem

(2) A person who contravenes subsection 4 (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than $5,000.

Cancellation of licence

7. If a person is convicted of contravening subsection 4 (1) or (2), his or her licence shall be deemed to be cancelled at the time the conviction is entered.

Regulations

8. The Lieutenant Governor in Council may make regulations,

(a) prescribing the fees payable for licences;

(b) prescribing the information to be included in an application for a licence;

(c) prescribing conditions to be met for the issuance and maintenance of a licence.

Repeals

9. The following are repealed:

R.S.O. 1980, c. 293

1. The *Minors' Protection Act*.

1989, c. 72

2. Section 13 of the *Provincial Penalties Adjustment Act, 1989*.

Commencement

10. This Act comes into force on the 180th day following the day it receives Royal Assent.

Short title

11. The short title of this Act is the *Tobacco Sale Regulation Act, 1990*.

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Publication

Bill 135

An Act to amend the Health Protection and Promotion Act, 1983

Mrs. Grier

LIBRARY
APR 18 1990
University of Toronto

1st Reading April 5th, 1990

2nd Reading

3rd Reading

Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to prohibit the sale of irradiated food and food which contains ingredients which have been irradiated.

Bill 135 1990

An Act to amend the Health Protection and Promotion Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Health Protection and Promotion Act, 1983* is amended by adding the following section: 1983, c. 10

17a.—(1) In this section, Definition

"ionizing radiation" means,

(a) gamma radiation from a Cobalt-60 or Cesium-137 source,

(b) X-rays generated from a machine operated at or below an energy level of 5 MeV,

(c) electrons generated from a machine operated at or below an energy level of 10 MeV, and

(d) such other radiation as is designated by regulation.

(2) No person shall sell or offer for sale any food which has been treated with ionizing radiation. Sale of irradiated food

(3) No person shall sell or offer for sale any food which contains any ingredient that has been treated with ionizing radiation. Idem

2. Subsection 95 (1) of the Act is amended by adding the following clause:

(da) designating levels and types of radiation for the purposes of section 17a.

3. Subsection 99 (3) of the Act is repealed and the following substituted:

Offence, sections of Act

(3) Any person who contravenes section 16, 17, 17a, 18, 20, 38 or 39, subsection 40 (9), subsection 41 (1), subsection 73 (2) or section 104 is guilty of an offence.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Health Protection and Promotion Amendment Act, 1990*.

Publicati

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 136

An Act to amend the Ontario Energy Board Act

Mr. Charlton

LIBRARY TORONTO

1st Reading April 5th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to give the Ontario Energy Board additional powers to regulate rates and to investigate matters such as capacity, price and source of supply.

Bill 136 1990

An Act to amend the Ontario Energy Board Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 13 of the *Ontario Energy Board Act* is amended by adding the following subsections: R.S.O. 1980, c. 332

(7) The Board has power to investigate capacity reserve margins and other liability criteria and the adequacy of supply from sources from outside Ontario. Investigation

(8) Where the Board conducts an investigation under subsection (7), it shall report the results of the investigation to the Minister. Report

2. Subsection 27 (1) of the Act is amended by adding the following clause:

(e) make rules governing its practice and procedure in any matter required to be done under clause 35 (1) (ba), (ha) or (hb).

3. Subsection 35 (1) of the Act is amended by adding the following clauses:

(ba) authorizing and requiring the Board to fix rates pursuant to a public hearing held under section 37 and prescribing the conditions and circumstances when the Board shall fix rates pursuant to a public hearing;

. . . . .

(ha) authorizing the Board to regulate rate levels and structures and prescribing the methods and procedures to be followed when so regulating;

(hb) authorizing the Board to regulate the supply and prices to be paid to non-utility producers and pre-

scribing the methods and procedures to be followed when so regulating.

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Ontario Energy Board Amendment Act, 1990*.

Bill 137

An Act to amend the Game and Fish Act

Mr. Wildman

LIBRARY
University of Toronto

1st Reading April 9th, 1990

2nd Reading

3rd Reading

Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to require hunters to wear not less than 3,250 square centimetres (approximately 500 square inches) of blaze orange material or such other quantity of coloured material as the regulations may permit.

Bill 137 1990

An Act to amend the Game and Fish Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Game and Fish Act* is amended by adding the following section: R.S.O. 1980, c. 182

19a. No person shall hunt unless wearing, Prohibition, clothing of hunters

(a) clothing showing at least 3,250 square centimetres of blaze orange material; or

(b) such quantity of such coloured material as may be authorized in the regulations.

2. Section 92 of the Act is amended by adding the following paragraph:

42a. prescribing the colour of and the amount of colour and the manner in which clothing shall be worn while hunting.

3. This Act comes into force on the day it receives Royal Assent. Commencement

4. The short title of this Act is the *Game and Fish Amendment Act, 1990*. Short title

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 138

An Act to amend the Highway Traffic Act

Mr. Cooke
(Windsor-Riverside)



1st Reading April 10th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to permit emergency vehicles after first coming to a stop at a stop sign or a red traffic light to proceed with caution and to require other drivers to yield the right of way to emergency vehicles unless it is unsafe to do so.

Bill 138 1990

An Act to amend the Highway Traffic Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 116 of the *Highway Traffic Act*, as re-enacted by the Statutes of Ontario, 1984, chapter 21, section 11, is amended by adding the following subsections: R.S.O. 1980, c. 198

(3) Despite subsection (1), every driver or street car operator shall yield the right of way to an emergency vehicle approaching the intersection or stopped at the intersection before proceeding. Emergency vehicles

(4) In this section, "emergency vehicle" means "emergency vehicle" as defined in clause 124 (1) (b). Definition

2. Section 124 of the Act, as re-enacted by the Statutes of Ontario, 1984, chapter 21, section 16, is amended by adding the following subsection:

(18a) Every driver other than a driver of an emergency vehicle shall yield the right of way to an emergency vehicle unless it is not safe to do so. Idem

3. This Act comes into force on the day it receives Royal Assent. Commencement

4. The short title of this Act is the *Highway Traffic Amendment Act, 1990*. Short title

Publications

Bill 139 **Private Member's Bill**

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 139

An Act to establish the Ontario Lottery Profits Awards Council

Mr. Laughren

LIBRARY

1st Reading April 10th, 1990

2nd Reading

3rd Reading

Royal Assent

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EXPLANATORY NOTE

The Bill creates the Ontario Lottery Profits Awards Council to deal with the profits of provincial lotteries and to promote cultural, multicultural and recreational activities.

Bill 139 1990

An Act to establish the Ontario Lottery Profits Awards Council

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Definitions

"applicant" means a person or association that submits an application to the Council;

"Council" means the Ontario Lottery Profits Awards Council;

"recreation" includes physical fitness and sports activities and "recreational" has a corresponding meaning.

2. A corporation, known as the "Ontario Lottery Profits Awards Council", consisting of fifteen members, is established. Council

3.—(1) Any active cultural, multicultural or recreational association in Ontario having at least twenty-five members may nominate a candidate for appointment to the Council. Appointment

(2) The Lieutenant Governor in Council shall appoint, Idem

(a) five members from nominees of cultural associations;

(b) five members from nominees of multicultural associations; and

(c) five members from nominees of recreational associations.

(3) The members of the Council shall be geographically representative of the population of Ontario and each member shall hold office for a term of two years, except that, of those Idem

first appointed, eight shall be appointed for a term of one year and seven for two years.

Chair

4. The members of the Council, at the first meeting in each calendar year, shall elect from among themselves a chair and a vice-chair to hold office until a successor chair or vice-chair is elected.

Quorum

5. A majority of the members of the Council constitutes a quorum whether or not a vacancy exists in the membership of the Council.

Staff

6. The Council may appoint such officers and employees as it considers appropriate for the purpose of carrying out its functions under this Act.

Objects

7. The Council shall,

(a) seek to promote, advance and develop cultural, multicultural and recreational activities and facilities in Ontario;

(b) receive, consider and decide upon applications for grants and loans out of moneys made available under section 9 of the *Ontario Lottery Corporation Act* for the purposes referred to in clause (a);

R.S.O. 1980, c. 344

(c) perform such other duties as are assigned to it by the Legislature.

By-laws

8. The Council may make by-laws regulating its proceedings and generally for the conduct and management of its activities.

Hearing

9.—(1) An applicant who is dissatisfied with the Council's disposition of his or her application may require a hearing by mailing or delivering written notice to the chair of the Council within fifteen days after receiving notice of the Council's initial decision.

Idem

(2) Upon receiving a notice under subsection (1), the Council shall promptly conduct a hearing into the application and may vary or revoke its initial decision and make any other decision regarding the application that the Council considers appropriate.

Annual report

10. The chair of the Council shall annually file with the Chairman of Management Board of Cabinet a report upon the affairs of the Council, and the Chairman of Management Board of Cabinet shall submit the report to the Lieutenant

Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Commencement

11. **This Act comes into force on the day it receives Royal Assent.**

Short title

12. **The short title of this Act is the *Ontario Lottery Profits Awards Council Act, 1990*.**

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Bill 140 **Government Bill**

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 140

An Act to amend the Public Lands Act

The Hon. L. McLeod
Minister of Natural Resources

MINISTRY OF NATURAL RESOURCES

1st Reading April 10th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The Bill empowers the Minister, with the approval of the Lieutenant Governor in Council, to impose a charge in respect of capacity to generate hydro-electricity on persons who are granted water powers or privileges by the Crown.

Bill 140 1990

An Act to amend the Public Lands Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 40 of the *Public Lands Act* is amended by adding the following subsections: R.S.O. 1980, c. 413

(3) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations, Regulation re capacity charge

(a) requiring persons who are subject to an agreement, lease, licence or other writing under subsection (2) to pay a charge in respect of capacity to generate hydro-electricity;

(b) defining capacity;

(c) prescribing the charge or a method of calculating it;

(d) respecting the form, terms and time of payment of the charge and the interest owed for late payments;

(e) providing for refunds in respect of the charge;

(f) prescribing the conditions under which the charge may be reduced or cancelled; and

(g) providing that the regulation applies to agreements, leases, licences and other writings in force on the day the regulation comes into force and to agreements, leases, licences and other writings renewed on or after that day.

(4) A charge imposed under subsection (3) is in addition to a charge in an agreement, lease, licence or other writing that is based upon energy production, but does not apply to an agreement, lease, licence or other writing that provides on its face for a charge based upon the capacity to generate hydro-electricity. Application of charge

Regulation may be retroactive

(5) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

Commencement

2. This Act shall be deemed to have come into force on the 1st day of January, 1990.

Short title

3. The short title of this Act is the *Public Lands Amendment Act, 1990*.

Publicat

Bill 141 **Private Member's Bill**

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 141

An Act to amend the Employment Standards Act

Mr. Wildman

LIBRARY
JAN 1 1990
University of Toronto

1st Reading April 10th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to make employers responsible for any losses experienced by the employee when the employee is forced by the employer to cancel or change vacation plans after having received permission to take vacation at that time.

Bill 141 1990

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. **The *Employment Standards Act* is amended by adding the following section:** R.S.O. 1980, c. 137

30a. If an employee has received permission from the employer to take a vacation during a specific period of time and the employer changes or cancels that vacation time, the employer is responsible for any losses incurred by the employee in respect of travel arrangements made for that period, including accommodation, transportation and incidental expenses. Cancellation or changing of vacation time

2. **This Act comes into force on the day it receives Royal Assent.** Commencement

3. **The short title of this Act is the *Employment Standards Amendment Act, 1990*.** Short title

Publication

Bill 142 Private Member's Bill

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 142

An Act to amend the Beds of Navigable Waters Act

Mr. Haggerty



1st Reading April 10th, 1990

2nd Reading

3rd Reading

Royal Assent

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EXPLANATORY NOTE

The Bill would establish the high water mark as the boundary of property described in a Crown grant bounded by navigable water, to provide a uniform interpretation in such cases.

Bill 142 **1990**

An Act to amend the Beds of Navigable Waters Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The *Beds of Navigable Waters Act* is amended by renumbering section 1 as section 1a and by adding the following section: R.S.O. 1980, c. 40

1. In this Act, Definitions

"bed", where used with reference to a navigable body of water, includes all land and land under water that lie below the high water mark;

"high water mark" means the level at which the water in a navigable body of water has stood for a sufficient period to leave a watermark along the bank of the navigable body of water.

(2) Section 1a of the Act, as renumbered by subsection (1), is amended by adding the following subsections:

(2) Where in any patent, conveyance or deed from the Crown made heretofore or hereafter the boundary of land is described as a navigable body of water or the edge, bank, beach, shore, shoreline or high water mark thereof or in any other manner with reference to the navigable body of water, the boundary shall be deemed always to have been the high water mark of the navigable body of water. Where boundary body of navigable water

(3) The Minister of Natural Resources may, upon the recommendation of the Surveyor General, fix the high water mark of any navigable body of water or any part thereof, and the Minister's decision is final. Minister may fix high water mark

2. Section 2 of the Act is amended by striking out "Section 1" in the first line and substituting "Section 1a".

Commencement

3. **This Act comes into force on the day it receives Royal Assent.**

Short title

4. **The short title of this Act is the *Beds of Navigable Waters Amendment Act, 1990*.**

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Bill 143

An Act to provide for Certain Rights for Deaf Persons

Mrs. Stoner

LIBRARY

1st Reading May 26th, 1988

2nd Reading

3rd Reading

Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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EXPLANATORY NOTE

The purpose of the Bill is to insure that deaf persons are not discriminated against by reason that they are accompanied by hearing ear dogs that are used by deaf persons as guide dogs.

The Bill extends to deaf persons with guide dogs the rights now enjoyed by blind persons with guide dogs under the *Blind Persons' Rights Act*.

Bill 143 **1989**

An Act to provide for Certain Rights for Deaf Persons

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1.—(1) In this Act,

"deaf person" means a person who because of deafness is dependent on a dog guide;

"dog guide" means a dog trained as a guide for a deaf person and having the qualifications prescribed by the regulations;

"Ministry" means the Ministry of the Attorney General.

Application

(2) This Act applies despite any other Act or any regulation, by-law or rule made thereunder.

Act binds Crown

(3) This Act binds the Crown.

Dog guides permitted in places to which public admitted

2.—(1) No person, directly or indirectly, shall,

(a) deny to any person the accommodation, services or facilities available in any place to which the public is customarily admitted; or

(b) discriminate against any person with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted, or the charges for the use thereof,

for the reason that he or she is a deaf person accompanied by a dog guide.

Dog guides permitted in self-contained dwelling unit

(2) No person, directly or indirectly, shall,

(a) deny to any person occupancy of any self-contained dwelling unit; or

(b) discriminate against any person with respect to any term or condition of occupancy of any self-contained dwelling unit,

for the reason that he or she is a deaf person keeping or customarily accompanied by a dog guide.

Other facilities

(3) Nothing in this section shall be construed to entitle a deaf person to require any service, facility or accommodation in respect of a dog guide other than the right to be accompanied by the dog guide.

Identification cards

3.—(1) The Attorney General or an officer of the Ministry designated by the Attorney General in writing may, upon application therefor, issue to a deaf person an identification card identifying the deaf person and his or her dog guide.

Cards as proof of qualification

(2) An identification card issued under subsection (1) is proof in the absence of evidence to the contrary that the deaf person and his or her dog guide identified therein are qualified for the purposes of this Act.

Surrender of cards

(3) Any person to whom an identification card is issued under subsection (1) shall, upon the request of the Attorney General or an officer of the Ministry designated by the Attorney General in writing, surrender his or her identification card for amendment or cancellation.

Regulations

4. The Lieutenant Governor in Council may make regulations prescribing qualifications for dog guides.

Penalty

5.—(1) Every person who contravenes section 2 is guilty of an offence and on conviction is liable to a fine of not more than $1,000.

Idem

(2) Every person who contravenes subsection 3 (3) or who, not being a deaf person, purports to be a deaf person for the purpose of claiming the benefit of this Act is guilty of an offence and on conviction is liable to a fine of not more than $100.

Commencement

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the *Deaf Persons' Rights Act, 1989*.

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Publicatio

Bill 144

Tommy Douglas Day Act, 1990

Mr. Philip
(Etobicoke-Rexdale)

LIBRARY
APR 23 1990
University of Toronto

1st Reading April 10th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTE

The purpose of the Bill is to commemorate the banning of extra-billing in Ontario, by naming June 20th after the father of medicare in Canada, Tommy Douglas.

Bill 144 1990

Tommy Douglas Day Act, 1990

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Proclamation of Tommy Douglas Day

1. The 20th day of June in each year, being the anniversary of the day that Bill 94, the Act that ended extra-billing in Ontario, was proclaimed in the Province of Ontario shall, in the Province of Ontario, be known as Tommy Douglas Day.

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Tommy Douglas Day Act, 1990*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 145

An Act to prohibit the Sale of Gun Replicas

Mr. Farnan

LIBRARY University of Toronto

1st Reading May 30th, 1988
2nd Reading
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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EXPLANATORY NOTE

The purpose of the Bill is to prohibit the sale of replicas of guns that might reasonably be mistaken for real guns in the commission of a crime.

Bill 145 1989

An Act to prohibit the Sale of Gun Replicas

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act, Definitions

"gun replica" means a toy gun or other object that is not a fire-arm as defined in the *Criminal Code* (Canada) but that closely resembles or might reasonably be mistaken for such a fire-arm; R.S.C. 1985, c. C-46

"Minister" means the Minister of Consumer and Commercial Relations;

"toy gun" means a gun designed for amusement or diversion rather than practical use.

2.—(1) No person shall sell a gun replica or offer a gun replica for sale. Prohibition

(2) No person shall sell or offer for sale a toy gun that is not a gun replica unless the Minister has issued a certificate of approval in respect of it. Idem

3.—(1) A person wishing to sell a toy gun or offer a toy gun for sale may apply to the Minister for a certificate of approval. Application for certificate

(2) The application shall be in the form provided by the Minister and shall include the fee set by the Minister and such other information concerning the design of the toy gun, including a model of it, as the Minister may require. Form of application

(3) If the Minister believes on reasonable grounds that the toy gun is not a gun replica, the Minister shall issue a certificate in respect of it. Issue of certificate

Notice of refusal

(4) If the Minister believes on reasonable grounds that the toy gun is a gun replica, the Minister shall notify the applicant of his or her refusal and the reasons therefor.

Effect of certificate

(5) A certificate of approval issued in respect of a toy gun is effective in respect of all toy guns produced by its manufacturer and having the same design.

Offence

4.—(1) Every person is guilty of an offence if the person,

(a) contravenes subsection 2 (1) or (2);

(b) provides the Minister with false information or purposely misleads the Minister in an application; or

(c) falsely claims that a certificate of approval has been issued in respect of a toy gun.

Where not guilty

(2) A person is not guilty of an offence for contravening subsection 2 (2) if when the person sold a toy gun or offered a toy gun for sale the person reasonably believed that the Minister had issued a certificate of approval.

Penalty

5.—(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not less than $100 and not more than $200 for a first offence and $500 for each subsequent offence.

Idem

(2) If the person is a corporation, the minimum fine is $500 and the maximum fines are $1,000 for a first offence and $5,000 for a second offence and not as provided in subsection (1).

Commencement

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the *Gun Replica Sale Prohibition Act, 1989*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 145

An Act to prohibit the Sale of Gun Replicas

Mr. Farnan

LIBRARY
JAN 10 1990
University of Toronto

1st Reading May 30th, 1988
2nd Reading June 16th, 1988
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

(Reprinted as amended by the Administration of Justice Committee)

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EXPLANATORY NOTE

The purpose of the Bill is to prohibit the sale of replicas of guns that might reasonably be mistaken for real guns in the commission of a crime.

Bill 145 1989

An Act to prohibit the Sale of Gun Replicas

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definition

1. In this Act,

"gun replica" means any device or object made of any material that substantially duplicates or can reasonably be perceived to be an actual firearm as defined in the *Criminal Code* (Canada), unless the device or object, R.S.C. 1985, c. C-46

(a) is coloured other than black, blue, silver or aluminium,

(b) is marked with a non-removable orange stripe that is at least one inch in width and that runs the entire length of the barrel on each side and on the front end of the barrel, and

(c) has a barrel at least one inch in diameter that is closed for a distance of not less than one-half inch from the front end of the barrel with the same material of which the device or object is made,

but does not include a non-firing replica of a firearm the original of which was manufactured prior to 1898.

Prohibition

2. No person shall sell a gun replica or offer a gun replica for sale.

Offence

3. Every person is guilty of an offence if the person contravenes section 2.

Penalty

4.—(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not less than $100 and not more than $200 for a first offence and $500 for each subsequent offence.

Idem

(2) If the person is a corporation, the minimum fine is $500 and the maximum fines are $1,000 for a first offence and $5,000 for a second offence and not as provided in subsection (1).

Commencement

5. This Act comes into force on the day it receives Royal Assent.

Short title

6. The short title of this Act is the *Gun Replica Sale Prohibition Act, 1989*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 39 ELIZABETH II, 1990

Bill 146

An Act for the Provision and Integration of Community Based Services for Seniors

Ms Bryden

1st Reading April 10th, 1990
2nd Reading
3rd Reading
Royal Assent

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EXPLANATORY NOTES

The Bill creates a framework for the provision of community based support services for seniors and the integration of these services with established programs and facilities. It is intended that the support services will give seniors greater independence and will prevent their unnecessary institutionalization by giving them access to programs that will assist them in carrying out day-to-day tasks.

The Bill allows the responsible Minister to establish community health and social service centres in each municipality, whose functions include the provision of support services for seniors. Where possible, the centres would be integrated with community health facilities established by the regulations under the *Ministry of Health Act* or with centres approved under the *Elderly Persons Centres Act*. The Bill also permits the Minister to provide support services through agreements with non-profit organizations or municipalities.

The support services contemplated by the Bill are listed in subsection 7 (2). In addition to the services provided directly to seniors, the Bill provides for assistance to individuals who have assumed responsibility for the care of seniors, through counselling and arranging for respite care.

Bill 146 1990

An Act for the Provision and Integration of Community Based Services for Seniors

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The purposes of this Act are, Purposes

(a) to promote the independence, dignity and well-being of seniors;

(b) to prevent unnecessary institutionalization of seniors;

(c) to provide a continuum of support services for seniors in accordance with their changing needs and their individual circumstances;

(d) to ensure that support services are provided to seniors in a manner that allows them to be an integral part of the community in which they live; and

(e) to assist family members and other individuals who have assumed responsibility for the care of seniors.

2. In this Act, Definitions

"community health and social service centre" means a community health and social service centre established under section 4;

"community program" means a program or service for seniors that is not provided as a support service under this Act and includes a program or service provided by a non-profit organization;

"health services" includes the services of a chiropodist registered under the *Chiropody Act*; R.S.O. 1980, c. 72

"Minister" means the minister of the Crown who is designated under section 3;

"prescribed" means prescribed by the regulations made under this Act;

"senior" means a person sixty years of age or older;

"support service" means a support service mentioned in subsection 7 (2).

Responsible minister

3. The Lieutenant Governor in Council may by order designate a minister of the Crown as the minister responsible for the administration of this Act.

Community health and social service centre

4.—(1) The Minister may establish community health and social service centres in particular municipalities.

Integration of facilities

R.S.O. 1980, cc. 280, 131

(2) Where possible, a centre established under subsection (1) shall be integrated with community health facilities established by the regulations under the *Ministry of Health Act* or with approved centres under the *Elderly Persons Centres Act*.

Functions of community health and social service centre

(3) The functions of a community health and social service centre are,

(a) to provide support services;

(b) to co-ordinate the community programs available in the municipality in order to eliminate gaps and duplication in the provision of community programs and support services;

(c) to assist seniors in gaining access to community programs and support services;

(d) to serve as a base from which home help programs are carried out;

(e) to provide office space and administrative support to non-profit organizations that provide community programs;

(f) to advocate the interests of seniors as a group within the community;

(g) to develop programs to facilitate the de-institutionalization of seniors; and

(h) to carry out such programs as may be prescribed by or under this or any other Act.

Provision of services

5. Where the Minister provides support services in a municipality, the support services,

(a) shall, unless it is impractical to do so, be provided by a community health and social service centre;

(b) shall be aimed at encouraging seniors' independence; and

(c) shall be co-ordinated and organized so that a senior may obtain information about, or access to, any community program or support service available in the municipality through a single telephone call.

Provision of services other than through community health and social centres

6.—(1) If it is impractical for support services to be provided by a community health and social service centre in a municipality, the Minister may make agreements with non-profit organizations and municipalities for the provision of support services.

Agreements between ministries

(2) The Minister may enter into agreements with other ministers for the provision of support services or the integration of support services and community programs.

Universal access to support services

7.—(1) Where the Minister provides support services in a municipality, every senior in the municipality is entitled to those support services without regard to his or her financial resources.

Support services

(2) The following support services may be provided to seniors and to such other classes of persons as may be prescribed:

1. Individual evaluations and counselling.

2. Social, recreational and exercise programs.

3. Meal programs.

4. Medical, health, psychological and dental services, including referrals and follow-up programs.

5. Educational programs, including, but not limited to, preventative medical and dental counselling, nutritional counselling and financial counselling.

6. Information and referral services regarding local community programs, including programs involving seniors' advocates.

7. Interpretation services.

8. Full or part-time day programs that incorporate social activities and rehabilitative care.

9. Home help programs.

10. Assistance in the performance of routine tasks away from the senior's home.

11. Daily contact by telephone or in person.

12. Transportation services.

13. Temporary short-term or long-term care to provide respite for the family members or other individuals who have assumed responsibility for the care of a senior without remuneration.

14. Emergency respite services.

15. Counselling and other assistance for the family members and other individuals mentioned in paragraph 13.

16. A service that is prescribed as a support service.

Provision of support services at home

(3) Where appropriate, a support service mentioned in subsection (2) may be provided in the senior's home.

Respite care

(4) Respite care provided under paragraph 13 or 14 of subsection (2) shall be provided in a manner that encourages the senior's independence.

Report to Minister

8.—(1) Every person responsible for the provision of a support service shall make a report to the Minister, whenever the Minister requests it, in the form and containing the information specified by the Minister.

Public access to report

(2) Subject to subsection (3), every person has a right of access to a report provided to the Minister under subsection (1).

Confidentiality

(3) The Minister shall not disclose information from a report in a way that identifies the senior or other person

receiving a support service to whom the information relates, except with the consent of that person.

Regulations

9. The Lieutenant Governor in Council may make regulations,

(a) prescribing programs to be carried out at community health and social centres;

(b) prescribing classes of persons for the purposes of subsection 7 (2);

(c) prescribing services as support services;

(d) governing the accommodation, facilities and equipment to be provided,

(i) in buildings in which support services are provided, and

(ii) in the course of the provision of support services;

(e) prescribing the qualifications, powers and duties of persons employed in providing support services or any class of support services;

(f) requiring persons responsible for providing support services to keep records and prescribing the form and content of those records;

(g) prescribing forms and providing for their use.

Commencement

10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

11. The short title of this Act is the *Seniors' Independence Act, 1990*.

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Bill 147

An Act respecting Independent Health Facilities

The Hon. E. Caplan
Minister of Health

LIBRARY

1st Reading June 2nd, 1988
2nd Reading
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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EXPLANATORY NOTES

The Bill would authorize the establishment and operation of independent health facilities. Under the Bill, the Minister of Health will decide upon the need for such a facility and will call for proposals.

A Director will be appointed under the Act. The Director may select a proposal and issue a licence for the facility selected. The Director is also empowered to suspend, revoke or refuse to renew a licence for cause. Any action by the Director will be subject to a hearing by the Health Facilities Appeal Board. The Minister may direct the Director to refuse to issue or renew a licence if the issuance or renewal is not in the public interest. A refusal directed by the Minister will not be subject to the same review as for either refusal to issue a licence or for suspension, revocation or refusal to renew by the Director for cause.

The Bill restricts the right to charge facility fees to licensed independent health facilities. An exception is made for one year for those facilities in operation when the Bill receives First Reading.

The terms "independent health facility" and "facility fee" are defined in the Bill.

Bill 147 1989

An Act respecting Independent Health Facilities

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act, Definitions

"assessor" means an assessor appointed under section 24;

"Board" means the Health Facilities Appeal Board under the *Ambulance Act*; R.S.O. 1980, c. 20

"Director" means the Director appointed under section 4;

"equity share" means a share of a class of shares of a corporation that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

"facility fee" means a charge or a fee for or in respect of a service or operating cost that,

(a) supports, assists and is a necessary adjunct, or any of them, to an insured service, and

(b) is not part of the insured service;

"health facility" means a place in which one or more members of the public receive or are intended to receive health services and includes an independent health facility;

"independent health facility" means a health facility in which one or more members of the public receive or are intended to receive services that are insured services and for which facility fees are or are intended to be charged, but does not include a health facility mentioned in section 2;

"inspector" means an inspector appointed under section 24;

"insured person" and "insured service" have the same meanings as in the *Health Insurance Act*; R.S.O. 1980, c. 197

"licence" means a licence issued by the Director under this Act;

"Minister" means the Minister of Health;

"Ministry" means the Ministry of Health;

"regulations" means regulations made under this Act;

"security interest" means an agreement between a person and a licensee that secures the licensee's payment or performance of an obligation by giving the person an interest in the licence.

Controlling interest

(2) A person shall be deemed to have a controlling interest in a corporation if the person alone or with an associate directly or indirectly beneficially owns or controls,

(a) issued and outstanding equity shares in the corporation in an amount to permit the person to direct the management and policies of the corporation; or

(b) 10 per cent or more of the issued and outstanding equity shares in the corporation.

Associates

(3) Persons shall be deemed to be associates of each other if,

(a) one person is a corporation of which the other person is an officer or director;

(b) one person is a partner of the other person;

(c) one person is a corporation that is controlled directly or indirectly by the other person;

(d) both persons are corporations and one person is controlled directly or indirectly by the same individual or corporation that controls directly or indirectly the other person;

(e) both persons are members of a voting trust where the trust relates to shares of a corporation;

(f) one person is the father, mother, brother, sister, child or spouse of the other person or is another rel-

ative who has the same home as the other person; or

(g) both persons are associates within the meaning of clauses (a) to (f) of the same person.

Calculating shares

(4) For the purposes of this Act, the total number of equity shares of a corporation beneficially owned or controlled shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equal to the total number of votes the share carries.

Application of Act

2. This Act does not apply to the following health facilities, places or services:

1. A facility or hospital that has been licensed or approved under the *Ambulance Act*, *Homes for Special Care Act*, *Laboratory and Specimen Collection Centre Licensing Act*, *Nursing Homes Act*, *Private Hospitals Act* or *Public Hospitals Act*. R.S.O. 1980, cc. 20, 202, 409, 320, 389, 410

2. An office or place in which one or more persons provide services in the course of the practice of a health profession,

   i. for or in respect of which the only charges made for insured services are for amounts paid or payable by the Plan as defined in the *Health Insurance Act*, and R.S.O. 1980, c. 197

   ii. for or in respect of which no facility fee is requested from or paid by the Province or any person.

3. A service or class of services that is exempt by the regulations.

4. A health facility or class of health facilities that is exempt by the regulations.

Licence required

3.—(1) No person shall establish or operate an independent health facility except under the authority of a licence issued by the Director.

Charge for facility fee

(2) No person shall charge or accept payment of a facility fee in respect of an insured service provided in an independent health facility unless the facility is licensed under this Act.

Idem

(3) No person shall charge an insured person a facility fee in respect of an insured service provided in an independent health facility licensed under this Act except as provided in the regulations.

Director

4. The Minister shall appoint an officer of the Ministry to be the Director of Independent Health Facilities.

Request for proposals

5.—(1) The Minister may request proposals for the establishment and operation of an independent health facility.

Matters to be considered

(2) In deciding whether or not to request proposals, the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Contents of request

(3) A request for proposals shall specify,

(a) the service or services to be provided in the independent health facility;

(b) the locality in which the independent health facility is to be located;

(c) such other requirements and limitations as the Minister considers relevant; and

(d) the final date for submission of proposals.

Submission of proposals

(4) Persons interested in establishing and operating an independent health facility in response to a request for proposals may submit proposals therefor to the Director.

Contents of proposal

(5) A proposal shall set out,

(a) the business and professional experience of the person submitting the proposal;

(b) details of the physical nature of the proposed facility;

(c) the nature of the service or services to be provided in the facility;

(d) the projected cost for the operation of the facility;

(e) details of the system that will be established to ensure the monitoring of the results of the service or services to be provided in the facility;

(f) details of the professional and other staff proposed for the facility;

(g) such other information as is relevant to the requirements and limitations specified in the request for proposals.

Consideration of proposals

(6) The Director shall consider the proposals and may request additional information in respect of any proposal.

Issuance of licence

6.—(1) Subject to section 8, the Director may issue a licence to a person who has submitted a proposal for the establishment and operation of an independent health facility where the Director is of the opinion,

(a) that the proposal meets the criteria specified in the request for proposals;

(b) that the quality and the standards of the independent health facility or of the service or services to be provided in the facility will comply with the regulations or, in the absence of regulations, will conform to the generally accepted quality and standards for the facility and the service or services to be provided in the facility;

(c) that the person will operate the independent health facility competently and with honesty and integrity; and

(d) that the person will establish and maintain a system to ensure the monitoring of the results of the service or services provided in the independent health facility.

Discretion

(2) The issuance of a licence to a person who meets the requirements of subsection (1) is discretionary in the Director and, despite a request for proposals or negotiations in respect of a proposal, the Director,

(a) is not required to issue a licence to any person; and

(b) may prefer any proposal over other proposals.

Preference to non-profit facilities, Canadian licensees

(3) Despite any international treaty or obligation to which Canada is a party or any law implementing such a treaty or obligation and without restricting the generality of subsection (2), the Director shall give preference to proposals that indicate,

(a) that the independent health facility will be operated on a non-profit basis; and

(b) that the person who has submitted the proposal for the establishment and operation of the facility is,

(i) a Canadian citizen ordinarily resident in Canada,

(ii) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada,

R.S.C. 1985, c. I-2

(iii) a corporate person controlled by one or more persons described in subclause (i) or (ii), or

(iv) a corporate person controlled by one or more persons described in subclause (i), (ii) or (iii).

Limitations and conditions

(4) The Director may issue a licence subject to such limitations and conditions as the Director considers necessary in the circumstances.

Transitional

7.—(1) A person who operates an independent health facility on the 2nd day of June, 1988 may, within one year after the date on which this section comes into force, submit a proposal for a licence to continue to operate the facility, as if the Minister had requested proposals under subsection 5 (1).

Idem

(2) Subsections 5 (4), (5) and (6) and sections 6, 8 and 9 apply with necessary modifications to a proposal referred to in subsection (1).

Existing facilities may operate and bill directly

(3) Despite section 3, a person who operates an independent health facility on the 2nd day of June, 1988 may continue

to operate the facility without a licence and to charge and accept payment from any person of a facility fee in respect of an insured service provided in the facility,

(a) where the person does not submit a proposal under subsection (1), for one year after the date on which this section comes into force;

(b) where the person submits a proposal and is served with notice that the Director proposes to issue a licence to the person, until the person is issued the licence; or

(c) where the person submits a proposal and is served with notice that the Director proposes to not issue a licence to the person, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Regulations may apply

(4) Any regulation that applies to independent health facilities licensed under this Act or to licensees may be made applicable to independent health facilities operated under subsection (3) or to the persons who operate the facilities, as the case may be.

Notice that subs. (3) does not apply

(5) Where the Director has reasonable and probable ground to believe that an independent health facility referred to in subsection (3) is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person, the Director may by a written notice direct the person who operates the facility that subsection (3) does not apply to the facility effective on the date specified in the notice.

Order is final

(6) An order under subsection (5) is final.

Notice of proposal to refuse to issue licence

8.—(1) Where the Director proposes to issue a licence under subsection 6 (1) or to refuse to issue a licence to any person, the Director shall serve notice of the proposed action, together with written reasons therefor, on every person who submitted a proposal for a licence.

Notice requiring hearing by Board

(2) A notice under subsection (1) shall inform the person on whom it is served that the person is entitled to a hearing by the Board if the person mails or delivers, within fifteen days after the notice under subsection (1) is served on the person,

notice in writing requiring a hearing to the Director and the Board, and the person may so require such a hearing.

Powers of Director where no hearing

(3) Where no person requires a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations.

Idem

(5) For the purposes of subsection (4), the Board may substitute its opinion for that of the Director, but the Board may not direct the Director to do anything that is contrary to the criteria specified in the request for proposals.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Minister may direct refusal to issue licence

9.—(1) At any time after the Minister requests proposals for the establishment and operation of an independent health facility and before a licence is issued, the Minister may direct the Director in writing to not issue a licence to any person.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Director shall refuse to issue licence

(3) Upon receipt of a direction under subsection (1), the Director shall refuse to issue a licence to any person and shall give written notice to every person who submitted a proposal of the refusal and of the Minister's direction.

Public notice

(4) Where the Minister issues a direction before the final date for submission of proposals, the Director shall publish notice of the direction in the same manner as the Minister's request for proposals.

No appeal from refusal to issue licence

(5) Section 8 does not apply to a refusal to issue a licence under this section.

Transfer of licence

10. A licence is not transferable.

Expiry of licence

11. Every licence expires on the date specified on the licence, which shall not be later than the fifth anniversary of its issuance or renewal, unless it is revoked or is surrendered to the Director before that date.

Share transfer

R.S.O. 1980, c. 466

12. A corporation that is a private company as defined in the *Securities Act* shall not permit an issue or transfer of equity shares of its capital stock that has the effect of changing the ownership or controlling interest in the corporation while the corporation is a licensee.

Duty of corporation to notify Director

13.—(1) A licensee that is a corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Idem

(2) Where a corporation has an interest in a licence, and there is reasonable ground for belief that an issue or transfer of equity shares of its capital stock or the occurrence of a circumstance by which shares of its capital stock acquire voting rights results or may result in a person acquiring a controlling interest in the corporation, the corporation shall so notify the Director forthwith.

Statement required

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of equity shares of capital stock in the corporation, which statement shall contain the information that, in the opinion of the Director, is reasonably necessary to enable the Director to determine,

(a) what persons, if any, have a controlling interest in the corporation; and

(b) what persons, if any, own or beneficially own directly or indirectly the corporate persons or a controlling interest in the corporate persons mentioned in clause (a).

Idem

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the opinion of the Director, it is reasonably necessary for the purposes set out in subsection (3).

Exercise of security interest

14. A person who has a security interest in a licence shall not exercise that interest if exercise of the interest would change the ownership or controlling interest in the licence.

Contracts

15. A licensee shall not enter into a contract whose effect is to change the ownership or controlling interest in a licence.

Order by Director to take control

16.—(1) Where the Director is of the opinion that an independent health facility should continue to operate after the expiry, surrender, suspension or revocation of the licence or after the death of the licensee, the Director by a written order may take control of and operate the facility for a period not exceeding one year.

Authority of Director

(2) Where the Director takes control of and operates an independent health facility under subsection (1), the Director has all the powers of the licensee and the Director may appoint one or more persons to operate the facility and each person so appointed is a representative of the Director.

Payment for services and compensation for property

(3) Where the Director takes control of an independent health facility, the licensee, former licensee or estate of the licensee, as the case may be,

(a) is not entitled to payment for any service that is provided by the facility while the facility is under the control of the Director; and

(b) is entitled to reasonable compensation from the Crown for the use of property of the licensee, former licensee or estate of the licensee while the facility is under the control of the Director.

Order effective immediately

(4) An order under subsection (1) takes effect immediately and is final.

17.—(1) The Director may revoke, suspend or refuse to renew a licence where,

Revocation and refusal to renew licence

(a) the licensee or any member of the licensee's staff or an employee of the licensee is in contravention of this Act or the regulations or any other Act of the Legislature or of the Parliament of Canada or regulation that applies to the independent health facility or to the licensee, any member of the licensee's staff or an employee of the licensee, as the case may be;

(b) there is a breach of a limitation or condition of the licence;

(c) any person has made a false statement in the proposal submitted to the Director in respect of the independent health facility;

(d) any person has made a false statement in the application for renewal of the licence;

(e) any person has made a false statement in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the independent health facility;

(f) there is reasonable ground for belief that the independent health facility is not being or will not be operated in accordance with the law and with honesty and integrity;

(g) there is reasonable ground for belief that the independent health facility is not being or will not be operated in a responsible manner in accordance with this Act or the regulations or any other Act or regulation that applies to the facility;

(h) there is reasonable ground for belief that the independent health facility is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person;

(i) the licensee has ceased operating the independent health facility for a period of at least six months and is not taking reasonable steps to prepare the facility to re-open;

(j) the licensee is a corporation described in section 12 that has permitted an issue or transfer contrary to that section;

(k) a corporation has failed to make a report or statement to the Director contrary to section 13;

(l) a person who has a security interest in a licence has exercised that interest contrary to section 14; or

(m) the licensee has entered into a contract described in section 15 contrary to that section.

Emergency suspension

(2) If the Director is of the opinion upon reasonable grounds that the independent health facility is being operated or will be operated in a manner that poses an immediate threat to the health or safety of any person, the Director by a written order may suspend the licence of the facility.

Order effective immediately

(3) Despite subsections (4) and (5), an order under subsection (2) takes effect immediately.

Notice requiring hearing by Board

(4) The Director shall deliver with the order under subsection (2) notice that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Board where hearing

(5) Subsections 19 (4) and (6) apply with necessary modifications to a suspension under subsection (2).

Minister may direct refusal to renew licence

18.—(1) The Minister may direct the Director in writing to not renew the licence.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Notice to licensee

(3) Upon receipt of a direction under subsection (1), the Director must give written notice to the licensee at least six months before the expiry of the licence that the licence will not be renewed upon expiry pursuant to the Minister's direction.

Director shall refuse to renew licence

(4) Upon the expiry of the licence, the Director shall refuse to renew the licence.

No appeal from refusal to renew licence

(5) Section 19 does not apply to a refusal to renew a licence under this section.

Notice of proposal to revoke or refuse to renew licence

19.—(1) Where the Director proposes to revoke, suspend or refuse to renew a licence under subsection 17 (1), the Director shall serve notice of the proposed action, together with written reasons therefor, on the licensee.

Notice requiring hearing by Board

(2) A notice under subsection (1) shall inform the licensee that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice under subsection (1) is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Director where no hearing

(3) Where a licensee does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a licensee requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Opportunity to comply

(5) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the retention of the licence and that it would be just and reasonable to give the licensee that opportunity.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Continuation of licence pending renewal

(7) Where, before the expiry of the licence, a licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Parties to hearing before the Board

20.—(1) The Director, the person who has required the hearing and any other person the Board may specify are parties to proceedings before the Board under this Act.

Submissions

(2) The Board may permit any person who is not a party before it to make written or oral submissions to the Board and, where it does so, those submissions may be made either personally or through an agent.

Examination of documentary evidence

(3) A party to proceedings and a person who is permitted to make submissions to the Board shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(6) The findings of fact of the Board following upon a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980, c. 484

Only members at hearing to participate in decision

(7) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was present throughout the hearing, heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2) and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of documentary evidence

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to that person by the Board within a reasonable time after the matter in issue has been finally determined.

Appeal from decision of Board

21.—(1) Any party to proceedings before the Board may appeal from its decision or order to the Divisional Court on a question of law alone.

Record to be filed in court

(2) Where any party appeals under subsection (1), the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of court on appeal

(3) On an appeal under subsection (1), the Divisional Court may affirm or may rescind the decision of the Board or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Final decision

(4) The decision of the Divisional Court under this section is final.

Service of notice

22. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that the person did

not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.

Payment by Minister

23. The Minister may pay all or part of the cost of services provided in and the operating costs of an independent health facility according to whatever method of payment the Minister may decide upon.

Inspectors and assessors

24.—(1) The Minister may appoint in writing one or more employees of the Ministry or other persons as inspectors or as assessors, or both.

Limitation

(2) In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector or an assessor in such manner as the Minister considers necessary or advisable.

Assessment

25.—(1) It is the function of an assessor to carry out assessments of the quality and the standards of services provided in independent health facilities.

Co-operation by licensees

(2) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an assessor carrying out an assessment of an independent health facility operated by a licensee.

Idem

(3) The co-operation required of a licensee includes,

(a) permitting the assessor to enter and inspect the premises of the independent health facility;

(b) permitting the assessor to inspect records, including patient records;

(c) providing to the assessor information requested by the assessor in respect of records, including patient records, or the care of patients in the independent health facility;

(d) providing the information mentioned in clause (c) in the form requested by the assessor;

(e) permitting the assessor to make or take and remove samples of any substance on the premises of the independent health facility;

(f) providing samples mentioned in clause (e) as requested by the assessor; and

(g) conferring with the assessor when requested to do so by the assessor.

Inspection of health facilities

26.—(1) An inspector may at any reasonable time, without a warrant, enter any premises of a health facility to make an inspection to ensure,

(a) in respect of a health facility operated by persons not licensed under this Act, that there is no contravention of subsection 3 (1) or (2);

(b) in respect of a health facility operated under subsection 6 (3) by persons not licensed under this Act, that the quality and standards of the service or services provided in the facility comply with the regulations or, in the absence of regulations, conform to the generally accepted quality and standards for the facility and the service or services provided in such facility; and

(c) in respect of a health facility operated by persons licensed under this Act, that this Act and the regulations and the limitations and conditions of the licence, if any, are being complied with.

Search of premises other than health facilities

(2) Where an inspector has reasonable ground to believe that there is in any premises, other than a health facility, any thing that there is reasonable ground to believe will afford evidence as to the commission of an offence under this Act or in relation to the establishment or operation of an independent health facility licensed under this Act, the inspector may apply under section 142 of the *Provincial Offences Act* for a warrant to enter and search the premises.

R.S.O. 1980, c. 400

Private residence

(3) Subsection (1) is not authority to enter a private residence without the consent of an occupier, except under the authority of a warrant under section 27.

Exempt health facilities

(4) Subsection (1) is authority to enter a health facility that is, under section 2, otherwise exempt from the application of this Act.

Powers on inspection

(5) Upon an inspection under this section, the inspector,

(a) has the right to inspect the premises and the operations carried out on the premises;

(b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment, patient

and drug records and any other records that are relevant for the purposes of the inspection, regardless of the form or medium in which such records are kept, but if such books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;

(c) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any material referred to in clause (b) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that the material is promptly returned to the person apparently in charge of the premises from which the material was removed;

(d) has the right, at any reasonable time, to make and take or require to be made or taken samples of any substance on the premises;

(e) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any sample referred to in clause (d) that relates to the purpose of the inspection for the purpose of making an analysis thereof; and

(f) may question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination.

Co-operation by licensees

(6) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an inspector carrying out an inspection of an independent health facility operated by a licensee.

Warrant to enter and inspect

27.—(1) A provincial judge or justice of the peace may issue a warrant in the form prescribed by the regulations where the judge or justice is satisfied upon application by an inspector, on information upon oath, that there is reasonable ground for believing that it is necessary to do anything set out in clause 26 (5) (a), (b), (c), (d) or (e) in respect of a health facility and,

(a) no occupier is present to grant access to a premises that is locked or otherwise inaccessible;

(b) no occupier is present to grant access to a private residence; or

(c) an occupier of the premises,

(i) has denied an inspector entry to the premises,

(ii) has instructed an inspector to leave the premises,

(iii) has obstructed an inspector,

(iv) has refused to produce to an inspector any material referred to in clause 26 (5) (b), or

(v) has refused to make or take a sample as required in clause 26 (5) (d).

Authority given by warrant

(2) A warrant issued under subsection (1) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officer or officers as the inspector calls upon for assistance, to do anything set out in clause 26 (5) (a), (b), (c), (d) or (e) and specified in the warrant.

Execution of warrant

(3) A warrant issued under subsection (1) shall be executed at reasonable times.

Expiry of warrant

(4) A warrant issued under subsection (1) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application without notice

(5) A provincial judge or justice of the peace may receive and consider an application for a warrant under subsection (1) without notice to and in the absence of the owner or occupier of the premises.

Admissibility of copies

28.—(1) Copies of material removed from premises under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the material of which they are copies.

Analysis report as evidence

(2) A certificate or report of an analysis of a sample removed from premises under this Act that purports to be signed by the laboratory technician who carried out the analysis shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate or report without proof of the signature or position of the person appearing to have signed the certificate or report.

Obstruction of inspector

29. No person shall obstruct an inspector or withhold or conceal from an inspector any book, document, correspondence, record or thing relevant to the subject-matter of an inspection.

Matters confidential

30. Every person employed in the administration of this Act, including any person making an assessment or inspection under this Act, shall preserve secrecy in respect of all matters that come to the person's knowledge in the course of the person's duties or employment or of an assessment or inspection, and shall not communicate any such matters to any person except,

(a) in connection with the administration or enforcement of any Act or any proceedings under any Act;

(b) in connection with matters relating to professional disciplinary proceedings, to a statutory body governing a health profession;

(c) to the person's counsel; or

(d) with the consent of the person to whom the information relates.

Offences

31.—(1) Every person who contravenes section 3, 29 or 30 is guilty of an offence.

Corporate offences

(2) Every person who contravenes section 12, 13, 14 or 15 is guilty of an offence.

Breach of regulations

(3) Every person who contravenes the regulations is guilty of an offence.

Penalty

(4) Every person who is guilty of an offence under this section is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than $5,000 on a first conviction and not more than $10,000 on each subsequent conviction.

Corporation

(5) Where a corporation is convicted of an offence under this section, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is $25,000 on a first conviction and $50,000 on each subsequent conviction, and not as provided in subsection (4).

Restraining order

32.—(1) In addition to any other remedy and to any penalty imposed by law, a contravention of section 3 may be restrained by action at the instance of the Attorney General.

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the action that constitutes the offence. Restraining order upon conviction

33.—(1) The Lieutenant Governor in Council may make regulations, Regulations

1. exempting any health facility or class of health facility from the application of this Act or the regulations or any provision thereof;

2. governing the process for submitting proposals;

3. governing applications for renewals of licences;

4. prescribing forms and providing for their use;

5. prescribing fees for licences and for renewals of licences;

6. classifying health facilities or independent health facilities;

7. respecting and governing the care, treatment and services provided in independent health facilities or any class thereof;

8. prescribing and governing the quality and the standards of services provided in independent health facilities or any class thereof;

9. prescribing and governing the quality and the standards of independent health facilities or any class thereof;

10. prescribing and governing the requirements for staff and employees of independent health facilities or any class thereof;

11. prescribing and governing the construction, establishment, location, equipment, maintenance and repair of, additions and alterations to, and operations of independent health facilities or any class thereof;

12. prescribing the books, records and accounts that shall be kept by licensees including their form and

content and the place or places where they shall be kept;

13. requiring the accounts of independent health facilities to be audited and requiring the licensees to furnish such information or accounts as may be required by the Director;

14. prescribing and governing the records that shall be kept by licensees with respect to the care and treatment of patients of the independent health facility;

15. governing the reports and returns that shall be made to the Director by licensees;

16. requiring and governing the system or systems that shall be kept by licensees to monitor the results of the services provided in independent health facilities or any class thereof;

17. governing access to patient or drug records and specifying persons who may have access to such records;

18. prescribing other duties of assessors;

19. prescribing other duties of inspectors;

20. classifying services;

21. exempting any service or class of service from the application of this Act or the regulations or any provision thereof;

22. prescribing services, classes of services and operating costs that are not part of the insured service and that do not support, assist and are not a necessary adjunct, or any of them, to an insured service;

23. prescribing services, classes of services and operating costs that are part of the insured service;

24. prescribing any services, any classes of services and any operating costs that are not part of the insured service and that support, assist and are a necessary adjunct, or any of them, to an insured service;

25. prescribing the maximum amount a person may charge for services or operating costs prescribed under paragraph 24;

26. prescribing the services, classes of services and operating costs for which a person may charge a facility fee to insured persons;

27. prescribing the maximum amount a person may charge to insured persons as facility fees;

28. governing and restricting the disposition and transfer of the assets of independent health facilities;

29. making any regulation made under paragraphs 1 to 28 applicable to independent health facilities operated under subsection 7 (3) or to the persons who operate the facilities.

(2) A regulation may be general or particular in its application. Scope of regulations

COMPLEMENTARY AMENDMENTS

34.—(1) Clause 1 (h) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(h) "insured services" means,

(i) such services of hospitals and health facilities as are prescribed by the regulations,

(ii) such services rendered by physicians as are prescribed by the regulations, and

(iii) such other health care services as are rendered by such practitioners and under such conditions and limitations as are prescribed by the regulations,

but does not include the services that a person is entitled to under the *Workers' Compensation Act*, the *Homes for Special Care Act* or under any Act of the Parliament of Canada. R.S.O. 1980, cc. 539, 202

(2) Clause 51 (1) (j) of the said Act is repealed and the following substituted therefor:

(j) prescribing the services rendered in or by hospitals and health facilities and by physicians and practitioners that are insured services, but no regulation may be made under this clause that disqualifies the

Plan for contribution by the Government of Canada.

(3) Subsection 51 (1) of the said Act is amended by adding thereto the following clauses:

(ja) prescribing any constituent elements that are part of an insured service rendered by physicians and practitioners;

(jb) prescribing any constituent elements that shall be deemed not to be part of an insured service rendered by physicians and practitioners.

Commencement

35. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

36. The short title of this Act is the *Independent Health Facilities Act, 1989*.

ON
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Bill 147

An Act respecting Independent Health Facilities

The Hon. E. Caplan
Minister of Health



1st Reading June 2nd, 1988
2nd Reading February 22nd, 1989
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

(Reprinted as amended by the Social Development Committee)

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EXPLANATORY NOTES

The Bill would authorize the establishment and operation of independent health facilities. Under the Bill, the Minister of Health will decide upon the need for such a facility and will call for proposals.

A Director will be appointed under the Act. The Director may select a proposal and issue a licence for the facility selected. The Director is also empowered to suspend, revoke or refuse to renew a licence for cause. Any action by the Director will be subject to a hearing by the Health Facilities Appeal Board. The Minister may direct the Director to refuse to issue or renew a licence if the issuance or renewal is not in the public interest. A refusal directed by the Minister will not be subject to the same review as for either refusal to issue a licence or for suspension, revocation or refusal to renew by the Director for cause.

The Bill restricts the right to charge facility fees to licensed independent health facilities. An exception is made for one year for those facilities in operation when the Bill received First Reading.

The terms "independent health facility" and "facility fee" are defined in the Bill.

Bill 147 1989

An Act respecting Independent Health Facilities

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act, Definitions

"assessor" means an assessor appointed under section 27 or 29;

"Board", except in section 36, means the Health Facilities Appeal Board under the *Ambulance Act*; R.S.O. 1980, c. 20

"College" means the College of Physicians and Surgeons of Ontario;

"Director" means the Director appointed under section 4;

"facility fee" means a charge or a fee for or in respect of a service or operating cost that,

(a) supports, assists and is a necessary adjunct, or any of them, to an insured service, and

(b) is not part of the insured service;

"health facility" means a place in which one or more members of the public receive health services and includes an independent health facility;

"independent health facility" means a health facility in which one or more members of the public receive services that are insured services and for which facility fees are charged, but does not include a health facility mentioned in section 2;

"inspector" means an inspector appointed under section 25 or 26;

"insured person" has the same meaning as in the *Health Insurance Act*; R.S.O. 1980, c. 197

"insured service" means,

(a) a service rendered by a physician for which an amount payable is prescribed by the regulations under the *Health Insurance Act*, or

R.S.O. 1980, c. 197

(b) a service prescribed as an insured service under the *Health Insurance Act* rendered by a practitioner within the meaning of that Act;

"licence" means a licence issued by the Director under this Act;

"medical care" means health care;

"medical record" means a record relating to health services;

"Minister" means the Minister of Health;

"Ministry" means the Ministry of Health;

"patient" means a person who receives health services in a health facility;

"physician" means a legally qualified medical practitioner;

"Registrar" means the Registrar of the College of Physicians and Surgeons of Ontario;

"regulations" means regulations made under this Act;

"voting share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of a contingency that has occurred and is continuing.

Interest affecting the control of a corporation

(2) A person shall be deemed to have an interest affecting the control of a corporation if the person alone or with one or more associates directly or indirectly benefically owns or controls the lesser of,

(a) voting shares in the corporation in a sufficient number to permit that person either alone or with one or more associates to direct the management and policies of the corporation; or

(b) voting shares to which are attached 10 per cent or more of the voting rights attached to all issued and outstanding voting shares of the corporation.

(3) Persons shall be deemed to be associates of each other if, Associates

(a) one person is a corporation of which the other person is an officer or director;

(b) one person is a partner of the other person;

(c) one person is a corporation of which the other person beneficially owns, directly or indirectly, voting shares carrying more than 10 per cent of the voting rights attached to all voting shares of the corporation for the time being outstanding;

(d) both persons are members of a voting trust where the trust relates to shares of a corporation;

(e) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or

(f) both persons are associates within the meaning of clauses (a) to (e) of the same person.

(4) For the purposes of this Act, the provisions of this Act related to corporations, their control, and the ownership, control and voting of shares apply with necessary modifications in respect of corporations to which Part III of the *Corporations Act* applies. Corporations without share capital R.S.O. 1980, c. 95

2. This Act does not apply to the following health facilities, persons, places or services: Application of Act

1. An office or place in which one or more persons provide services in the course of the practice of a health profession,

   i. for or in respect of which the only charges made for insured services are for amounts paid or payable by the Plan as defined in the *Health Insurance Act*, and R.S.O. 1980, c. 197

   ii. for or in respect of which no facility fee is requested from or paid by the Province or any person.

2. A service or class of services that is exempt by the regulations.

3. A health facility or class of health facilities that is exempt by the regulations.

4. A person who is or a class of persons that is exempt by the regulations.

Licence required

3.—(1) No person shall establish or operate an independent health facility except under the authority of a licence issued by the Director.

Charge for facility fee

(2) No person shall charge or accept payment of a facility fee in respect of an insured service provided in an independent health facility unless the facility is operated by a person licensed under this Act.

Idem

(3) No person shall charge an insured person a facility fee in respect of an insured service provided in an independent health facility operated by a person licensed under this Act.

Application of subs. (2)

(4) Subsection (2) does not apply to prevent a person from charging a facility fee to or accepting payment of a facility fee from a person who is not an insured person.

Director

4. The Minister shall appoint an employee of the Ministry to be the Director of Independent Health Facilities.

Request for proposals

5.—(1) The Minister may request proposals for the establishment and operation of an independent health facility.

Matters to be considered

(2) In deciding whether or not to request proposals, the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

(3) A request for proposals shall specify, Contents of request

(a) the service or services to be provided in the independent health facility;

(b) the locality in which the independent health facility is to be located;

(c) such other requirements and limitations as the Minister considers relevant; and

(d) the final date for submission of proposals.

(4) Persons interested in establishing and operating an independent health facility in response to a request for proposals may submit proposals therefor to the Director. Submission of proposals

(5) A proposal shall set out, Contents of proposal

(a) the business and professional experience of the person submitting the proposal;

(b) details of the physical nature of the proposed facility;

(c) the nature of the service or services to be provided in the facility;

(d) the projected cost for the operation of the facility;

(e) details of the system that will be established to ensure the monitoring of the results of the service or services to be provided in the facility;

(f) details of the professional and other staff proposed for the facility;

(g) such other information as is relevant to the requirements and limitations specified in the request for proposals.

(6) The Director shall consider the proposals and may request additional information in respect of any proposal. Consideration of proposals

6.—(1) Subject to section 8, the Director may issue a licence to a person who has submitted a proposal for the establishment and operation of an independent health facility where the Director is of the opinion, Issuance of licence

(a) that the proposal meets the criteria specified in the request for proposals;

(b) that the quality and the standards of the independent health facility or of the service or services to be provided in the facility will comply with the regulations or, in the absence of regulations, will conform to the generally accepted quality and standards for the facility and the service or services to be provided in the facility;

(c) that the person will operate the independent health facility competently and with honesty and integrity; and

(d) that the person will establish and maintain a system to ensure the monitoring of the results of the service or services provided in the independent health facility.

Discretion

(2) The issuance of a licence to a person who meets the requirements of subsection (1) is discretionary in the Director and, despite a request for proposals or negotiations in respect of a proposal, the Director,

(a) is not required to issue a licence to any person; and

(b) may prefer any proposal over other proposals.

Preference to non-profit facilities, Canadian licensees

(3) Despite any international treaty or obligation to which Canada is a party or any law implementing such a treaty or obligation and without restricting the generality of subsection (2), the Director shall give preference to proposals that indicate,

(a) that the independent health facility will be operated on a non-profit basis;

(b) that the person who has submitted the proposal for the establishment and the operation of the facility is,

(i) a Canadian citizen ordinarily resident in Canada,

(ii) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada,

R.S.C. 1985, c. I-2

(iii) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i) or (ii), or

(iv) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i), (ii) or (iii); and

(c) that any management services to be provided to the facility will be provided by a person described in subclause (b) (i), (ii), (iii) or (iv).

Non-profit basis

(4) For the purpose of clause (3) (a), an independent health facility is operated on a non-profit basis if the profit derived from the operation of the facility is used exclusively in the further operation of the facility and no part of the profit is payable to, or is otherwise available for, the personal benefit of any person.

Limitations and conditions

(5) The Director may issue a licence subject to such limitations and conditions as the Director considers necessary in the circumstances.

Transitional

7.—(1) A person who operated an independent health facility on the 2nd day of June, 1988 may, within one year after the date on which this section comes into force, submit a proposal for a licence to continue to operate the facility, as if the Minister had requested proposals under subsection 5 (1).

Idem

(2) Subsections 5 (4), (5) and (6) and sections 6, 8 and 9 apply with necessary modifications to a proposal referred to in subsection (1).

Existing facilities may operate and bill directly

(3) Despite section 3, a person who operated an independent health facility on the 2nd day of June, 1988 may continue to operate the facility without a licence and to charge and accept payment from any person of a facility fee in respect of an insured service provided in the facility,

(a) where the person does not submit a proposal under subsection (1), for one year after the date on which this section comes into force;

(b) where the person submits a proposal and is served with notice that the Director proposes to issue a licence to the person, until the person is issued the licence; or

(c) where the person submits a proposal and is served with notice that the Director proposes to not issue a licence to the person, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Regulations may apply

(4) Any regulation that applies to independent health facilities operated by persons licensed under this Act or to licensees may be made applicable to independent health facilities operated under subsection (3) or to the persons who operate the facilities, as the case may be.

Notice that subs. (3) does not apply

(5) Where the Director has reasonable and probable ground to believe that an independent health facility referred to in subsection (3) is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person, the Director may by a written notice direct the person who operates the facility that subsection (3) does not apply to the facility effective on the date specified in the notice.

Order is final

(6) An order under subsection (5) is final.

Transitional

(7) This section applies with necessary modifications to a person as though the person operated an independent health facility on the 2nd day of June, 1988, if the person, before the coming into force of this section, was operating a health facility and charging fees that were set out in a column denoted by the letter "T" in Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* and if, before this section comes into force, those regulations are amended so that those fees are no longer set out in such a column.

R.S.O. 1980, c. 197

Notice of proposal to refuse licence

8.—(1) Where the Director proposes to issue a licence under subsection 6 (1) or to refuse to issue a licence to any person, the Director shall serve notice of the proposed action on every person who submitted a proposal for a licence.

Contents of notice

(2) A notice under subsection (1) shall inform the person on whom it is served that the person is entitled to,

(a) written reasons for the proposal if a request is received by the Director within seven days of the receipt by the person of the notice of the proposal,

and the person may so require the written reasons; and

(b) a hearing by the Board if the person mails or delivers, within fifteen days after receipt by the person of the written reasons, a written request and the person may so require the hearing.

Powers of Director where no hearing

(3) Where no person requires a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations.

Idem

(5) For the purposes of subsection (4), the Board may substitute its opinion for that of the Director, but the Board may not direct the Director to do anything that is contrary to the criteria specified in the request for proposals.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Minister may direct refusal to issue licence

9.—(1) At any time after the Minister requests proposals for the establishment and operation of an independent health facility and before a licence is issued, the Minister may direct the Director in writing to not issue any licence in respect of the request for proposals.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Director shall refuse to issue licence

(3) Upon receipt of a direction under subsection (1), the Director shall refuse to issue any licence in respect of the request for proposals and shall give written notice to every person who submitted a proposal of the refusal and of the Minister's direction.

Public notice

(4) Where the Minister issues a direction before the final date for submission of proposals, the Director shall publish notice of the direction in the same manner as the Minister's request for proposals.

No appeal from refusal to issue licence

(5) Section 8 does not apply to a refusal to issue a licence under this section.

Special situation

10.—(1) Where the Minister is of the opinion that it is essential that an independent health facility for which proposals have been requested be established without delay, and any person has required a hearing by the Board in respect of a proposal by the Director to issue or to refuse to issue a licence, the Minister may direct the Director in writing to carry out the proposal forthwith.

Action by Director

(2) The Director shall carry out the direction and shall give written notice to the person who required the hearing.

Notice

(3) The Director's notice shall inform the person of the Minister's direction, of the action to be taken by the Director and of the person's right to proceed with the hearing before the Board.

Application of s. 8

(4) Section 8 does not apply to prevent the Minister or the Director from acting under this section.

Power of Board

(5) The Board, in an order under section 8, may require the Director to issue a licence to an applicant despite the issuance of a licence to any other person.

Transfer of licence

11.—(1) A licence is not transferable without the consent of the Director.

Criteria

(2) In deciding whether to consent to the transfer of a licence,

(a) the Director shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence and for the purpose subsection 6 (1), other than clause 6 (1) (a), applies with necessary modifications; and

(b) the Director shall apply the principle that consent shall be refused if there are reasonable grounds to believe that money or other consideration, other than the prescribed fee, has been or will be paid, transferred, accepted or received for the transfer of the licence.

Prohibition of consideration for transfers

(3) No person shall pay, transfer, accept or receive money or other consideration other than the prescribed fee for the transfer of a licence.

Duty of directors

(4) Every director of a corporation that transfers a licence shall take all reasonable care to ensure that no money or other consideration other than the prescribed fee is paid, transferred, accepted or received for the transfer of the licence.

Expiry of licence

12. Every licence expires on the date specified on the licence, which shall not be later than the fifth anniversary of its issuance or renewal, unless it is revoked or is surrendered to the Director before that date.

Share transfer R.S.O. 1980, c. 466

13.—(1) A licensee that is a private company as defined in the *Securities Act* shall not permit an issue or transfer of its voting shares that may result in a person acquiring or increasing an interest affecting its control while it is a licensee unless its licence includes a condition as to the ownership or control of the licensee and such issue or transfer of voting shares would not result in a breach of that condition.

No consideration for licence in share transfer

(2) No person shall pay, transfer, accept or receive, in respect of a transfer of shares of a corporation that is a licensee, money or other consideration that can reasonably be regarded as referable to the licence held by the corporation.

Duty of corporation to notify Director

14.—(1) A licensee that is a corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Idem

(2) Where a corporation has an interest in a licence and there is reasonable ground for belief that an event will occur

whereby a person would acquire an interest or increase an interest affecting the control of the corporation while the corporation has an interest in the licence, the corporation shall so notify the Director forthwith.

Statement required

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of voting shares in the corporation, which statement shall contain the information that, in the opinion of the Director, is reasonably necessary to enable the Director to determine,

(a) what persons, if any, have interests affecting the control of the corporation; and

(b) what persons, if any, have interests affecting the control of a person mentioned in clause (a) that is a corporation.

Idem

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the opinion of the Director, it is reasonably necessary for the purposes set out in subsection (3).

Licence not to be used as security

15. A licence shall not be used as security for the payment or performance of an obligation, and any transaction purporting to use a licence as security for the payment or performance of an obligation is void.

Contracts

16.—(1) A licensee shall not enter into a contract that may result in,

(a) a change in the beneficial ownership of the licence; or

(b) in the case of a licensee that is a corporation, a person acquiring or increasing an interest affecting the control of the corporation while it is a licensee.

Exception

(2) Subsection (1) does not apply if the licence includes a condition as to the ownership or control of the licensee and the contract would not result in a breach of the condition.

Order by Director to take control

17.—(1) Where the Director is of the opinion that an independent health facility should continue to operate after the expiry, surrender, suspension or revocation of the licence, after the death of the licensee or after the licensee ceases to operate the facility, the Director by a written order may take

control of and operate the facility for a period not exceeding one year.

Authority of Director

(2) Where the Director takes control of and operates an independent health facility under subsection (1), the Director has all the powers of the licensee and the Director may appoint one or more persons to operate the facility and each person so appointed is a representative of the Director.

Payment for services and compensation for property

(3) Where the Director takes control of an independent health facility, the licensee, former licensee or estate of the licensee, as the case may be,

(a) is not entitled to payment for any service that is provided by the facility while the facility is under the control of the Director; and

(b) is entitled to reasonable compensation from the Crown for the use of property of the licensee, former licensee or estate of the licensee while the facility is under the control of the Director.

Order effective immediately

(4) An order under subsection (1) takes effect immediately and is final.

Revocation and refusal to renew licence

18.—(1) The Director may revoke, suspend or refuse to renew a licence where,

(a) the licensee or any member of the licensee's staff or an employee of the licensee is in contravention of this Act or the regulations or any other Act of the Legislature or of the Parliament of Canada or regulation that applies to the independent health facility or to the licensee, any member of the licensee's staff or an employee of the licensee, as the case may be;

(b) there is a breach of a limitation or condition of the licence;

(c) any person has made a false statement in the proposal submitted to the Director in respect of the independent health facility;

(d) any person has made a false statement in the application for renewal of the licence;

(e) any person has made a false statement in any report, document or other information required to be furnished by this Act or the regulations or any

other Act or regulation that applies to the independent health facility;

(f) any person has paid, transferred, accepted or received money or other consideration, other than the prescribed fee, for the transfer of the licence;

(g) there is reasonable ground for belief that the independent health facility is not being or will not be operated in accordance with the law and with honesty and integrity;

(h) there is reasonable ground for belief that the independent health facility is not being or will not be operated in a responsible manner in accordance with this Act or the regulations or any other Act or regulation that applies to the facility;

(i) there is reasonable ground for belief that the independent health facility is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person;

(j) the licensee has ceased operating the independent health facility for a period of at least six months and is not taking reasonable steps to prepare the facility to re-open;

(k) the licensee is a corporation described in subsection 13 (1) that has permitted an issue or transfer contrary to that subsection;

(l) a corporation has failed to make a report or statement to the Director contrary to section 14; or

(m) the licensee has entered into a contract described in section 16 contrary to that section.

Emergency suspension

(2) If the Director is of the opinion upon reasonable grounds that the independent health facility is being operated or will be operated in a manner that poses an immediate threat to the health or safety of any person, the Director by a written order may suspend the licence of the facility.

Order effective immediately

(3) Despite subsections (4) and (5), an order under subsection (2) takes effect immediately.

Notice requiring hearing by Board

(4) The Director shall deliver with the order under subsection (2) notice that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days

after the notice is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Board where hearing

(5) Subsections 20 (4) and (6) apply with necessary modifications to a suspension under subsection (2).

Minister may direct refusal to renew licence

19.—(1) The Minister may direct the Director in writing to not renew the licence.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Notice to licensee

(3) Upon receipt of a direction under subsection (1), the Director must give written notice to the licensee at least six months before the expiry of the licence that the licence will not be renewed upon expiry pursuant to the Minister's direction.

Petition to Lieutenant Governor in Council

(4) A licensee may, by petition filed with the Clerk of the Executive Council filed within fifteen days after the notice in subsection (3) has been served on the licensee, request that the Lieutenant Governor in Council revoke the direction of the Minister to not renew the licence.

Powers of Lieutenant Governor in Council

(5) Upon receipt of a petition filed under subsection (4), the Lieutenant Governor in Council shall confirm or revoke the direction of the Minister.

Deemed confirmation

(6) If the Lieutenant Governor in Council does not confirm or revoke the direction of the Minister within sixty days after the petition under subsection (4) has been filed, the Lieuten-

ant Governor in Council shall be deemed to have confirmed the direction.

No appeal from refusal to renew licence

(7) Section 20 does not apply to a refusal to renew a licence under this section.

Notice of proposal to revoke or refuse to renew licence

20.—(1) Where the Director proposes to revoke, suspend or refuse to renew a licence under subsection 18 (1), the Director shall serve notice of the proposed action, together with written reasons therefor, on the licensee.

Notice requiring hearing by Board

(2) A notice under subsection (1) shall inform the licensee that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice under subsection (1) is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Director where no hearing

(3) Where a licensee does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a licensee requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Opportunity to comply

(5) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the retention of the licence and that it would be just and reasonable to give the licensee that opportunity.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Continuation of licence pending renewal

(7) Where, before the expiry of the licence, a licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Notice re consent to transfer a licence

(8) Subsections (1) to (6) apply with necessary modifications where the Director proposes to refuse to consent to the transfer of a licence and, for the purpose,

(a) the Director shall serve the notice under subsection (1) upon both the licensee and the proposed transferee; and

(b) the licensee and the proposed transferee, or either of them, may require the hearing by the Board, but if they each require such a hearing, the Board shall combine the applications into one proceeding.

Parties to hearing before the Board

21.—(1) The Director, the person who has required the hearing and any other person the Board may specify are parties to proceedings before the Board under this Act.

Submissions

(2) The Board may permit any person who is not a party before it to make written or oral submissions to the Board and, where it does so, those submissions may be made either personally or through an agent.

Examination of documentary evidence

(3) A party to proceedings shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such

case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(6) The findings of fact of the Board following upon a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980, c. 484

Only members at hearing to participate in decision

(7) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was present throughout the hearing, heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2) and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of documentary evidence

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to that person by the Board within a reasonable time after the matter in issue has been finally determined.

Appeal from decision of Board

22.—(1) Any party to proceedings before the Board may appeal from its decision or order to the Divisional Court on a question of law alone.

Record to be filed in court

(2) Where any party appeals under subsection (1), the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of court on appeal

(3) On an appeal under subsection (1), the Divisional Court may affirm or may rescind the decision of the Board or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Final decision

(4) The decision of the Divisional Court under this section is final.

Service of notice

23. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is

served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.

Payment by Minister

24. The Minister may pay all or part of any one or more of the capital costs of an independent health facility, the operating costs of an independent health facility or the costs of the services provided in an independent health facility according to whatever method of payment the Minister may decide upon.

Appointment of inspectors by Minister

25.—(1) The Minister may appoint in writing one or more persons as inspectors.

Limitation

(2) In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector in such manner as the Minister considers necessary or advisable.

Investigation

(3) Where the Director is of the opinion that it is necessary or advisable that an inspection be made of an independent health facility licensed under this Act to ensure that this Act, the regulations and the limitations and conditions of the licence are being complied with, the Director may direct one or more inspectors appointed by the Minister to make the investigation and to report to the Director.

Duty of inspector

(4) An inspector appointed by the Minister shall make such inspections as the Director requires under subsection (3) and shall make such reports and interim reports in respect of the inspections as are required by the Director.

Notice to Registrar of C.P.S.O.

26.—(1) Where the Director is of the opinion that there is reasonable ground for belief that there is or has been a contravention of section 3, the Director may give notice to the Registrar of the College.

Idem

(2) Where the Director is of the opinion that there is reasonable ground for belief that the quality and standards of service provided in a health facility operated under subsection 7 (3) do not comply with the regulations or, in the absence of regulations, do not conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility, the Director may give notice to the Registrar.

Appointment of inspectors by Registrar

(3) Upon receipt of a notice under subsection (1) or (2), the Registrar shall appoint in writing one or more persons as inspectors to make the inspection.

Notice by inspector

(4) Before making an inspection, an inspector shall give written notice to the person who appears to be in control or management of the health facility.

Progress reports

(5) The Registrar shall report to the Director upon the appointment of the inspector or inspectors and, at the request of the Director, upon the progress of the inspection.

Report to Registrar

(6) An inspector appointed by the Registrar shall make the inspection and shall make such reports and interim reports in respect of the inspection as are required by the Registrar.

Report to Director

(7) The Registrar shall report the result of the inspection to the Director.

Report to College

(8) The Registrar shall also report the result of the inspection to the Executive Committee or such other committee of the College as the Registrar considers appropriate.

Time and form of reports

(9) Reports and interim reports under this section shall be made at such times, in such form, in such detail and with such supporting material as is required by the person or body to whom the report is to be made.

Appointment of assessors

27.—(1) The Registrar may appoint persons in writing as assessors.

Appointment by committee of College

(2) The Council of the College, or a committee established by the Council acting on the direction of the Council, may appoint persons as assessors.

Appointment upon notice

(3) Where the Director considers it necessary or advisable that assessments be carried out of the quality and the standards of services provided in a health facility referred to in subsection 32 (2), the Director may give notice in writing to the chief administrative officer of the governing, registering or licensing body of a health profession or to the licensee or operator of the health facility.

Choice of notice

(4) The Director is not required to give notice to or consult with the licensee or operator of the health facility before giving notice to the chief administrative officer of the governing, registering or licensing body of a health profession.

Appointment of assessor

28.—(1) Upon receipt of notice under section 27, the chief administrative officer of the governing, registering or licensing

body of a health profession shall appoint one or more persons in writing as assessors.

Reports to Director

(2) The chief administrative officer shall report to the Director upon the officer's appointments of assessors under subsection (1) and upon the assessments made by them.

Time and form of reports

(3) The chief administrative officer shall make the reports at such times, in such form, in such detail and with such supporting material as is required by the Director.

Notice to operator or licensee

29.—(1) A notice by the Director to the licensee or operator of a health facility under section 27 shall state that the Director intends to require an assessment of the quality and the standards of services provided in the health facility and that the licensee or operator may consult with the Director in respect of the person or persons to be appointed as assessors.

Appointment of assessor

(2) Where the Director and the licensee or operator agree upon the person or persons to be appointed, the Director may appoint the person or persons to make the assessment.

Qualifications of assessor

(3) An assessor appointed under this section,

(a) must be a physician if the services are provided by a physician in the health facility; and

(b) must not be a public servant within the meaning of the *Public Service Act*. R.S.O. 1980, c. 418

Reports

(4) An assessor appointed under this section shall report to the Director and to the Registrar in such form, in such detail, with such supporting material and at such times as the Director or the Registrar, or both, requires.

Notice to a chief administrative officer

(5) If the Director and the licensee or operator do not agree upon the person or persons to be appointed, the Director may give notice to the chief administrative officer of the governing, registering or licensing body of a health profession under section 27.

Powers of assessor

30.—(1) An assessor, after giving written notice to the licensee or operator of a health facility, for the purposes of assessing the medical care provided to one or more persons in the health facility, may,

(a) inspect and receive information from medical records or from notes, charts and other material relating to patient care and reproduce and retain copies thereof; and

(b) interview the licensee or operator and members of the staff of the health facility on matters that relate to the quality and standards of service provided in the health facility.

Notice by assessor

(2) A notice under subsection (1) shall, where practicable, state the subject-matter of the interview and the identity, if known, of the person or persons to be interviewed.

Notice by licensee or operator

(3) A licensee or operator who receives written notice under subsection (1) shall forthwith give written notice to each person who may be interviewed of the subject-matter of the interview.

Legal representation

(4) The notice by the licensee or operator shall inform the person that the person is entitled to be represented by legal counsel.

Assessment

31.—(1) It is the function of an assessor to carry out assessments of the quality and the standards of services provided in independent health facilities.

Co-operation by licensees

(2) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an assessor carrying out an assessment of an independent health facility operated by a licensee.

Idem

(3) The co-operation required of a licensee includes,

(a) permitting the assessor to enter and inspect the premises of the independent health facility;

(b) permitting the assessor to inspect records, including patient records;

(c) providing to the assessor information requested by the assessor in respect of records, including patient records, or the care of patients in the independent health facility;

(d) providing the information mentioned in clause (c) in the form requested by the assessor;

(e) permitting the assessor to make or take and remove samples of any substance on the premises of the independent health facility;

(f) providing samples mentioned in clause (e) as requested by the assessor; and

(g) conferring with the assessor when requested to do so by the assessor.

Inspection of health facilities

32.—(1) An inspector appointed by the Registrar may, at any reasonable time, without a warrant, enter any premises of a health facility to make an inspection,

(a) in respect of a health facility operated by a person not licensed under this Act, to determine whether there is or has been a contravention of section 3; and

(b) in respect of a health facility operated under subsection 7 (3) by a person not licensed under this Act, to ensure that the quality and standards of services provided in the facility comply with the regulations or, in the absence of regulations, conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility.

Inspector appointed by Minister

(2) An inspector appointed by the Minister may, at any reasonable time, without a warrant, enter any premises of an independent health facility operated by a person licensed under this Act, to make an inspection to ensure that this Act and the regulations, and the limitations and conditions, if any, of the licence, are being complied with.

Search of premises other than health facilities

(3) Where an inspector has reasonable ground to believe that there is in any premises, other than a health facility, any thing that there is reasonable ground to believe will afford evidence as to the commission of an offence under this Act or in relation to the establishment or operation of an independent health facility licensed under this Act, the inspector may apply under section 142 of the *Provincial Offences Act* for a warrant to enter and search the premises.

R.S.O. 1980, c. 400

Private residence

(4) Subsection (1) is not authority to enter a private residence without the consent of an occupier, except under the authority of a warrant under section 33.

Exempt health facilities

(5) Subsection (1) is authority to enter a health facility that is, under section 2, otherwise exempt from the application of this Act.

Powers on inspection

(6) Upon an inspection under this section, the inspector,

(a) has the right to inspect the premises and the operations carried out on the premises;

(b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment, patient and drug records and any other records that are relevant for the purposes of the inspection, regardless of the form or medium in which such records are kept, but if such books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;

(c) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any material referred to in clause (b) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that the material is promptly returned to the person apparently in charge of the premises from which the material was removed;

(d) has the right, at any reasonable time, to make and take or require to be made or taken samples of any substance on the premises;

(e) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any sample referred to in clause (d) that relates to the purpose of the inspection for the purpose of making an analysis thereof; and

(f) may question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination.

Co-operation by licensees

(7) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an inspector carrying out an inspection of an independent health facility operated by a licensee.

Warrant to enter and inspect

33.—(1) A provincial judge or justice of the peace may issue a warrant in the form prescribed by the regulations where the judge or justice is satisfied upon application by an inspector, on information upon oath, that there is reasonable ground for believing that it is necessary to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) in respect of a health facility and,

(a) no occupier is present to grant access to a premises that is locked or otherwise inaccessible;

(b) no occupier is present to grant access to a private residence; or

(c) an occupier of the premises,

(i) has denied an inspector entry to the premises,

(ii) has instructed an inspector to leave the premises,

(iii) has obstructed an inspector,

(iv) has refused to produce to an inspector any material referred to in clause 32 (6) (b), or

(v) has refused to make or take a sample as required in clause 32 (6) (d).

Authority given by warrant

(2) A warrant issued under subsection (1) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officer or officers as the inspector calls upon for assistance, to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) and specified in the warrant.

Execution of warrant

(3) A warrant issued under subsection (1) shall be executed at reasonable times.

Expiry of warrant

(4) A warrant issued under subsection (1) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application without notice

(5) A provincial judge or justice of the peace may receive and consider an application for a warrant under subsection (1) without notice to and in the absence of the owner or occupier of the premises.

Admissibility of copies

34.—(1) Copies of material removed from premises under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the material of which they are copies.

Analysis report as evidence

(2) A certificate or report of an analysis of a sample removed from premises under this Act that purports to be signed by the laboratory technician who carried out the analysis shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate

or report without proof of the signature or position of the person appearing to have signed the certificate or report.

Obstruction of inspector

35. No person shall obstruct an inspector or withhold or conceal from an inspector any book, document, correspondence, record or thing relevant to the subject-matter of an inspection.

Definitions

36.—(1) In this section,

"Board" means the Health Services Appeal Board under the *Health Insurance Act*;

R.S.O. 1980, c. 197

"Plan" means the Ontario Health Insurance Plan referred to in section 10 of the *Health Insurance Act*.

Plan to reimburse facility fee

(2) Where the Director is satisfied that a person has paid a facility fee all or part of which was charged in contravention of section 3, the Director may direct that the amount of the facility fee that was charged in contravention of section 3 be paid to the person out of the Plan.

Fee is debt to Plan

(3) The person who charged the facility fee referred to in subsection (2) is indebted to the Plan for an amount equal to the amount paid out of the Plan under subsection (2) and the administrative charge prescribed by the regulations.

Set-off against Plan

(4) If the person who charged the facility fee referred to in subsection (2) is a person who submits accounts directly to the Plan, then, subject to subsections (5), (6) and (8), part or all of the money owed to the Plan under subsection (3) may be recovered by set-off against any money payable to the person by the Plan.

Notice of proposed set-off

(5) The Director shall serve notice of the proposed set-off referred to in subsection (4), together with written reasons therefor, on the person who is indebted to the Plan.

Notice requiring hearing by Board

(6) A notice under subsection (5) shall inform the person that he or she is entitled to a hearing by the Board if the person mails or delivers, within fifteen days after the notice under subsection (5) is served on the person, notice in writing requiring a hearing to the Director and the Board, and the person may so require a hearing.

Powers where no hearing

(7) Where a person does not require a hearing by the Board in accordance with subsection (6), the proposed set-off stated in the notice under subsection (5) may be carried out.

(8) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct that the proposed set-off be carried out or refrained from being carried out, and for such purposes, the Board may substitute its opinion for that of the Director. Powers of Board where hearing

(9) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension. Extension of time for requiring hearing

(10) Sections 21 and 22 apply with necessary modifications to a hearing and decision by the Board under this section. ss. 21, 22 apply

(11) Despite subsection 44 (1) of the *Health Insurance Act*, the General Manager may furnish to, Disclosure of information R.S.O. 1980, c. 197

(a) a member of the Board;

(b) the person who was charged or who paid the facility fee;

(c) the person who charged or accepted payment of the facility fee and counsel for the person;

(d) any person engaged in the administration of this Act or the regulations or any proceedings under this Act or the regulations;

(e) any other person with the consent of the person to whom the services were provided in respect of which the facility fee was charged,

information pertaining to the nature of the services provided, the date or dates on which the services were provided and for whom, the name and address of the person who provided the services, the amounts paid or payable by the Plan for such services, and the persons to whom the fee for the insured service and the facility fee were paid or are payable, for the purpose of this section.

37.—(1) In this section, "confidential information" means information obtained by a person employed in the administration of this Act or making an assessment or inspection under this Act in the course of the person's employment, assessment Definition

or inspection and that relates to a patient or former patient of a health facility.

Confidentiality of information

(2) No person shall communicate confidential information to any person except in accordance with subsection (4).

Application

(3) Subsection (2) applies to any person whether or not the person is or was employed in the administration of this Act or is or was an inspector or assessor under this Act.

Communication of confidential information

(4) A person employed in the admininstration of this Act, an assessor or inspector under this Act or any person who obtains confidential information pursuant to this subsection may communicate confidential information,

(a) in connection with the administration or enforcement of any Act or any proceedings under any Act;

(b) in connection with matters relating to professional disciplinary proceedings, to a statutory body governing a health profession;

(c) to the person's counsel; or

(d) with the consent of the patient or former patient to whom the information relates.

Testimony by officials in civil suits

(5) No person employed in the administration of this Act or who made an inspection or assessment under this Act shall be required to give testimony in a civil action or proceeding with respect to any information obtained in the course of the person's employment, assessment or inspection except in a proceeding under an Act or a regulation under an Act.

Closed proceedings

(6) A provincial offences court may exclude the public from proceedings to enforce any Act if the court is of the opinion that confidential information may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of that information in the interests of any patient or former patient to whom it relates outweighs the desirability of adhering to the principle that hearings be open to the public.

Immunity

38. No action or other proceeding for damages shall be commenced against an inspector, an assessor, the Director, the Registrar, the Council of the College or a committee established by the Council, the Board, or a member of the Council, the committee or the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under

this Act or the regulations, or for any neglect or default in the performance or exercise in good faith of such power or duty.

Offences

39.—(1) Every person who contravenes section 3, 11, 35 or 37 is guilty of an offence.

Corporate offences

(2) Every person who contravenes section 13, 14, 15 or 16 is guilty of an offence.

Breach of regulations

(3) Every person who contravenes the regulations is guilty of an offence.

Penalty

(4) Every person who is guilty of an offence under this section is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than $5,000 on a first conviction and not more than $10,000 on each subsequent conviction.

Corporation

(5) Where a corporation is convicted of an offence under this section, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is $25,000 on a first conviction and $50,000 on each subsequent conviction, and not as provided in subsection (4).

Penalty

(6) Every person who is guilty of an offence under this section for contravention of section 11 or subsection 13 (2) is liable on conviction, in addition to any fine under subsection (4) or (5), to a fine not exceeding the amount of money or the value of the consideration paid, transferred, accepted or received in contravention of section 11 or subsection 13 (2).

Restraining order

40.—(1) In addition to any other remedy and to any penalty imposed by law, a contravention of section 3 may be restrained by action at the instance of the Attorney General.

Restraining order upon conviction

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the action that constitutes the offence.

Annual Report

41. The Minister shall annually prepare a report on the implementation of this Act and submit it to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Regulations

42.—(1) The Lieutenant Governor in Council may make regulations,

1. exempting any health facility or class of health facility from the application of this Act or the regulations or any provision thereof;

2. governing the process for submitting proposals;

3. governing applications for renewals of licences;

4. prescribing forms and providing for their use;

5. prescribing fees for licences, for transfers of licences and for renewals of licences;

6. classifying health facilities or independent health facilities;

7. respecting and governing the care, treatment and services provided in independent health facilities or any class thereof;

8. prescribing and governing the quality and the standards of services provided in independent health facilities or any class thereof;

9. prescribing and governing the quality and the standards of independent health facilities or any class thereof;

10. prescribing and governing the requirements for staff and employees of independent health facilities or any class thereof;

11. prescribing and governing the construction, establishment, location, equipment, maintenance and repair of, additions and alterations to, and operations of independent health facilities or any class thereof;

12. prescribing the books, records and accounts that shall be kept by licensees including their form and content and the place or places where they shall be kept;

13. requiring the accounts of independent health facilities to be audited and requiring the licensees to furnish such information or accounts as may be required by the Director;

14. prescribing and governing the records that shall be kept by licensees with respect to the care and treatment of patients of the independent health facility;

15. governing the reports and returns that shall be made to the Director by licensees;

16. requiring and governing the system or systems that shall be kept by licensees to monitor the results of the services provided in independent health facilities or any class thereof;

17. governing access to patient or drug records and specifying persons who may have access to such records;

18. prescribing other duties of assessors;

19. prescribing other duties of inspectors;

20. classifying services;

21. exempting any service or class of service from the application of this Act or the regulations or any provision thereof;

22. prescribing services, classes of services and operating costs that are not part of an insured service and that do not support, assist and are not a necessary adjunct, or any of them, to an insured service;

23. prescribing services, classes of services and operating costs that are part of the insured service;

24. prescribing any services, any classes of services and any operating costs that are not part of an insured service and that support, assist and are a necessary adjunct, or any of them, to the insured service;

25. prescribing the maximum amount a person may charge for services or operating costs prescribed under paragraph 24;

26. prescribing conditions that shall attach to licences of independent health facilities or any class or classes thereof;

27. prescribing administrative charges for the purposes of section 36;

28. governing and restricting the disposition and transfer of the assets of independent health facilities;

29. making any regulation made under paragraphs 1 to 28 applicable to independent health facilities operated under subsection 7 (3) or to the persons who operate the facilities;

30. exempting any person who operates a health facility that is approved, licenced or designated under any other Act or any class of such persons from the application of this Act or the regulations or any provision thereof.

Scope of regulations

(2) A regulation may be general or particular in its application.

COMPLEMENTARY AMENDMENT

43.—(1) Subsection 51 (1) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

(ja) prescribing constitutent elements that are part of insured services rendered by physicians or by practitioners;

(jb) prescribing constitutent elements that shall be deemed not to be part of insured services rendered by physicians or by practitioners.

(2) Section 51 of the said Act is amended by adding thereto the following subsection:

Services designated without prescribing amounts payable

(4) The Lieutenant Governor in Council may make regulations under clause (1) (j) prescribing services that are insured services without prescribing any amounts payable by the Plan for those services.

Commencement

44. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

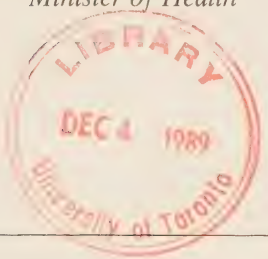
45. The short title of this Act is the *Independent Health Facilities Act, 1989*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 147

An Act respecting Independent Health Facilities

The Hon. E. Caplan
Minister of Health



1st Reading June 2nd, 1988
2nd Reading February 22nd, 1989
3rd Reading
Royal Assent

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

(Reprinted as amended by the Committee of the Whole House)

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EXPLANATORY NOTES

The Bill would authorize the establishment and operation of independent health facilities. Under the Bill, the Minister of Health will decide upon the need for such a facility and will call for proposals.

A Director will be appointed under the Act. The Director may select a proposal and issue a licence for the facility selected. The Director is also empowered to suspend, revoke or refuse to renew a licence for cause. Any action by the Director will be subject to a hearing by the Health Facilities Appeal Board. The Minister may direct the Director to refuse to issue or renew a licence if the issuance or renewal is not in the public interest. A refusal directed by the Minister will not be subject to the same review as for either refusal to issue a licence or for suspension, revocation or refusal to renew by the Director for cause.

The Bill restricts the right to charge facility fees to licensed independent health facilities. An exception is made for one year for those facilities in operation when the Bill received First Reading.

The terms "independent health facility" and "facility fee" are defined in the Bill.

Bill 147 1989

An Act respecting Independent Health Facilities

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act, Definitions

"assessor" means an assessor appointed under section 27 or 29;

"Board", except in section 36, means the Health Facilities Appeal Board under the *Ambulance Act*; R.S.O. 1980, c. 20

"College" means the College of Physicians and Surgeons of Ontario;

"Director" means the Director appointed under section 4;

"facility fee" means a charge or a fee for or in respect of a service or operating cost that,

(a) supports, assists and is a necessary adjunct, or any of them, to an insured service, and

(b) is not part of the insured service;

"health facility" means a place in which one or more members of the public receive health services and includes an independent health facility;

"independent health facility" means a health facility in which one or more members of the public receive services that are insured services and for which facility fees are charged, but does not include a health facility mentioned in section 2;

"inspector" means an inspector appointed under section 25 or 26;

"insured person" has the same meaning as in the *Health Insurance Act*; R.S.O. 1980, c. 197

"insured service" means,

(a) a service rendered by a physician for which an amount payable is prescribed by the regulations under the *Health Insurance Act*, or

R.S.O. 1980, c. 197

(b) a service prescribed as an insured service under the *Health Insurance Act* rendered by a practitioner within the meaning of that Act;

"licence" means a licence issued by the Director under this Act;

"maximum allowable consideration", in relation to a licence for an independent health facility, means,

(a) if section 7 applied with respect to the facility at the time it came into force, the amount prescribed by the regulations or determined by the method prescribed by the regulations, or

(b) in any other case, zero;

"medical care" means health care;

"medical record" means a record relating to health services;

"Minister" means the Minister of Health;

"Ministry" means the Ministry of Health;

"patient" means a person who receives health services in a health facility;

"physician" means a legally qualified medical practitioner;

"Registrar" means the Registrar of the College of Physicians and Surgeons of Ontario;

"regulations" means regulations made under this Act;

"voting share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of a contingency that has occurred and is continuing.

Interest affecting the control of a corporation

(2) A person shall be deemed to have an interest affecting the control of a corporation if the person alone or with one or

more associates directly or indirectly benefically owns or controls the lesser of,

(a) voting shares in the corporation in a sufficient number to permit that person either alone or with one or more associates to direct the management and policies of the corporation; or

(b) voting shares to which are attached 10 per cent or more of the voting rights attached to all issued and outstanding voting shares of the corporation.

Associates

(3) Persons shall be deemed to be associates of each other if,

(a) one person is a corporation of which the other person is an officer or director;

(b) one person is a partner of the other person;

(c) one person is a corporation of which the other person beneficially owns, directly or indirectly, voting shares carrying more than 10 per cent of the voting rights attached to all voting shares of the corporation for the time being outstanding;

(d) both persons are members of a voting trust where the trust relates to shares of a corporation;

(e) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or

(f) both persons are associates within the meaning of clauses (a) to (e) of the same person.

Corporations without share capital

(4) For the purposes of this Act, the provisions of this Act related to corporations, their control, and the ownership, control and voting of shares apply with necessary modifications in respect of corporations to which Part III of the *Corporations Act* applies.

R.S.O. 1980, c. 95

Application of Act

2. This Act does not apply to the following health facilities, persons, places or services:

1. An office or place in which one or more persons provide services in the course of the practice of a health profession,

i. for or in respect of which the only charges made for insured services are for amounts paid or payable by the Plan as defined in the *Health Insurance Act*, and

R.S.O. 1980, c. 197

ii. for or in respect of which no facility fee is requested from or paid by the Province or any person.

2. A service or class of services that is exempt by the regulations.

3. A health facility or class of health facilities that is exempt by the regulations.

4. A person who is or a class of persons that is exempt by the regulations.

Licence required

3.—(1) No person shall establish or operate an independent health facility except under the authority of a licence issued by the Director.

Charge for facility fee

(2) No person shall charge or accept payment of a facility fee in respect of an insured service provided in an independent health facility unless the facility is operated by a person licensed under this Act.

Idem

(3) No person shall charge an insured person a facility fee in respect of an insured service provided in an independent health facility operated by a person licensed under this Act.

Application of subs. (2)

(4) Subsection (2) does not apply to prevent a person from charging a facility fee to or accepting payment of a facility fee from a person who is not an insured person.

Director

4. The Minister shall appoint an employee of the Ministry to be the Director of Independent Health Facilities.

Request for proposals

5.—(1) The Minister may request proposals for the establishment and operation of an independent health facility.

Matters to be considered

(2) In deciding whether or not to request proposals, the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Contents of request

(3) A request for proposals shall specify,

(a) the service or services to be provided in the independent health facility;

(b) the locality in which the independent health facility is to be located;

(c) such other requirements and limitations as the Minister considers relevant; and

(d) the final date for submission of proposals.

Submission of proposals

(4) Persons interested in establishing and operating an independent health facility in response to a request for proposals may submit proposals therefor to the Director.

Contents of proposal

(5) A proposal shall set out,

(a) the business and professional experience of the person submitting the proposal;

(b) details of the physical nature of the proposed facility;

(c) the nature of the service or services to be provided in the facility;

(d) the projected cost for the operation of the facility;

(e) details of the system that will be established to ensure the monitoring of the results of the service or services to be provided in the facility;

(f) details of the professional and other staff proposed for the facility;

(g) such other information as is relevant to the requirements and limitations specified in the request for proposals.

Consideration of proposals

(6) The Director shall consider the proposals and may request additional information in respect of any proposal.

Issuance of licence

6.—(1) Subject to section 8, the Director may issue a licence to a person who has submitted a proposal for the establishment and operation of an independent health facility where the Director is of the opinion,

(a) that the proposal meets the criteria specified in the request for proposals;

(b) that the quality and the standards of the independent health facility or of the service or services to be provided in the facility will comply with the regulations or, in the absence of regulations, will conform to the generally accepted quality and standards for the facility and the service or services to be provided in the facility;

(c) that the person will operate the independent health facility competently and with honesty and integrity; and

(d) that the person will establish and maintain a system to ensure the monitoring of the results of the service or services provided in the independent health facility.

Discretion

(2) The issuance of a licence to a person who meets the requirements of subsection (1) is discretionary in the Director and, despite a request for proposals or negotiations in respect of a proposal, the Director,

(a) is not required to issue a licence to any person; and

(b) may prefer any proposal over other proposals.

Preference to non-profit facilities, Canadian licensees

(3) Despite any international treaty or obligation to which Canada is a party or any law implementing such a treaty or obligation and without restricting the generality of subsection (2), the Director shall give preference to proposals that indicate,

(a) that the independent health facility will be operated on a non-profit basis; and

(b) that the person who has submitted the proposal for the establishment and the operation of the facility is,

(i) a Canadian citizen ordinarily resident in Canada,

(ii) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada, R.S.C. 1985, c. I-2

(iii) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i) or (ii), or

(iv) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i), (ii) or (iii).

Non-profit basis

(4) For the purpose of clause (3) (a), an independent health facility is operated on a non-profit basis if the profit derived from the operation of the facility is used exclusively in the further operation of the facility and no part of the profit is payable to, or is otherwise available for, the personal benefit of any person.

Limitations and conditions

(5) The Director may issue a licence subject to such limitations and conditions as the Director considers necessary in the circumstances.

Transitional

7.—(1) A person who operated an independent health facility on the 2nd day of June, 1988 may, within one year after the date on which this section comes into force, submit a proposal for a licence to continue to operate the facility, as if the Minister had requested proposals under subsection 5 (1).

Idem

(2) Subsections 5 (4), (5) and (6) and sections 6, 8 and 9 apply with necessary modifications to a proposal referred to in subsection (1).

Existing facilities may operate and bill directly

(3) Despite section 3, a person who operated an independent health facility on the 2nd day of June, 1988 may continue to operate the facility without a licence and to charge and accept payment from any person of a facility fee in respect of an insured service provided in the facility,

(a) where the person does not submit a proposal under subsection (1), for one year after the date on which this section comes into force;

(b) where the person submits a proposal and is served with notice that the Director proposes to issue a licence to the person, until the person is issued the licence; or

(c) where the person submits a proposal and is served with notice that the Director proposes to not issue a licence to the person, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Regulations may apply

(4) Any regulation that applies to independent health facilities operated by persons licensed under this Act or to licensees may be made applicable to independent health facilities operated under subsection (3) or to the persons who operate the facilities, as the case may be.

Notice that subs. (3) does not apply

(5) Where the Director has reasonable and probable ground to believe that an independent health facility referred to in subsection (3) is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person, the Director may by a written notice direct the person who operates the facility that subsection (3) does not apply to the facility effective on the date specified in the notice.

Order is final

(6) An order under subsection (5) is final.

Transitional

(7) This section applies with necessary modifications to a person as though the person operated an independent health facility on the 2nd day of June, 1988, if the person, before the coming into force of this section, was operating a health facility and charging fees that were set out in a column denoted by the letter "T" in Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* and if, before this section comes into force, those regulations are amended so that those fees are no longer set out in such a column.

R.S.O. 1980, c. 197

Idem

(8) Subsection (3) does not apply to allow a person to charge an insured person a fee, or accept from an insured per-

son payment of a fee, for a service if, before this section comes into force,

(a) there was a fee for the service set out in a column described in subsection (7); and

(b) the regulation described in subsection (7) is amended so that a fee for the service is no longer payable under the regulation.

Notice of proposal to refuse licence

8.—(1) Where the Director proposes to issue a licence under subsection 6 (1) or to refuse to issue a licence to any person, the Director shall serve notice of the proposed action on every person who submitted a proposal for a licence.

Contents of notice

(2) A notice under subsection (1) shall inform the person on whom it is served that the person is entitled to,

(a) written reasons for the proposal if a request is received by the Director within seven days of the receipt by the person of the notice of the proposal, and the person may so require the written reasons; and

(b) a hearing by the Board if the person mails or delivers, within fifteen days after receipt by the person of the written reasons, a written request and the person may so require the hearing.

Powers of Director where no hearing

(3) Where no person requires a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations.

Idem

(5) For the purposes of subsection (4), the Board may substitute its opinion for that of the Director, but the Board may not direct the Director to do anything that is contrary to the criteria specified in the request for proposals.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for

applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Minister may direct refusal to issue licence

9.—(1) At any time after the Minister requests proposals for the establishment and operation of an independent health facility and before a licence is issued, the Minister may direct the Director in writing to not issue any licence in respect of the request for proposals.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Director shall refuse to issue licence

(3) Upon receipt of a direction under subsection (1), the Director shall refuse to issue any licence in respect of the request for proposals and shall give written notice to every person who submitted a proposal of the refusal and of the Minister's direction.

Public notice

(4) Where the Minister issues a direction before the final date for submission of proposals, the Director shall publish notice of the direction in the same manner as the Minister's request for proposals.

No appeal from refusal to issue licence

(5) Section 8 does not apply to a refusal to issue a licence under this section.

Special situation

10.—(1) Where the Minister is of the opinion that it is essential that an independent health facility for which proposals have been requested be established without delay, and any person has required a hearing by the Board in respect of a proposal by the Director to issue or to refuse to issue a

licence, the Minister may direct the Director in writing to carry out the proposal forthwith.

Action by Director

(2) The Director shall carry out the direction and shall give written notice to the person who required the hearing.

Notice

(3) The Director's notice shall inform the person of the Minister's direction, of the action to be taken by the Director and of the person's right to proceed with the hearing before the Board.

Application of s. 8

(4) Section 8 does not apply to prevent the Minister or the Director from acting under this section.

Power of Board

(5) The Board, in an order under section 8, may require the Director to issue a licence to an applicant despite the issuance of a licence to any other person.

Transfer of licence

11.—(1) A licence is not transferable without the consent of the Director.

Criteria

(2) In deciding whether to consent to the transfer of a licence,

(a) the Director shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence and for the purpose subsection 6 (1), other than clause 6 (1) (a), applies with necessary modifications; and

(b) the Director shall apply the principle that consent shall be refused if there are reasonable grounds to believe that money or other consideration, other than the prescribed fee and an amount not exceeding the maximum allowable consideration, has been or will be paid, transferred, accepted or received for the transfer of the licence.

Restrictions on consideration for transfers

(3) No person shall, for the transfer of a licence, pay, transfer, accept or receive money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration.

Duty of directors

(4) Every director of a corporation that transfers a licence shall take all reasonable care to ensure that, for the transfer of the licence, no money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration is paid, transferred, accepted or received.

Limitations and conditions

(5) In consenting to the transfer of a licence, the Director may attach to the licence such limitations and conditions as the Director considers necessary in the circumstances.

Expiry of licence

12. Every licence expires on the date specified on the licence, which shall not be later than the fifth anniversary of its issuance or renewal, unless it is revoked or is surrendered to the Director before that date.

Share transfer R.S.O. 1980, c. 466

13.—(1) A licensee that is a private company as defined in the *Securities Act* shall not permit an issue or transfer of its voting shares that may result in a person acquiring or increasing an interest affecting its control while it is a licensee unless its licence includes a condition as to the ownership or control of the licensee and such issue or transfer of voting shares would not result in a breach of that condition.

Restrictions on consideration for licence in share transfer

(2) No person shall pay, transfer, accept or receive, in respect of a transfer of shares of a corporation that is a licensee, money or other consideration that can reasonably be regarded as referable to the licence held by the corporation other than an amount not exceeding the portion of the maximum allowable consideration allocated to the shares as prescribed by the regulations.

Duty of corporation to notify Director

14.—(1) A licensee that is a corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Idem

(2) Where a corporation has an interest in a licence and there is reasonable ground for belief that an event will occur whereby a person would acquire an interest or increase an interest affecting the control of the corporation while the corporation has an interest in the licence, the corporation shall so notify the Director forthwith.

Statement required

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of voting shares in the corporation, which statement shall contain the information that, in the opinion of the Director, is reasonably necessary to enable the Director to determine,

(a) what persons, if any, have interests affecting the control of the corporation; and

(b) what persons, if any, have interests affecting the control of a person mentioned in clause (a) that is a corporation.

Idem

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the opinion of the Director, it is reasonably necessary for the purposes set out in subsection (3).

Licence not to be used as security

15. A licence shall not be used as security for the payment or performance of an obligation, and any transaction purporting to use a licence as security for the payment or performance of an obligation is void.

Contracts

16.—(1) A licensee shall not enter into a contract that may result in,

(a) a change in the beneficial ownership of the licence without a corresponding transfer of the licence; or

(b) in the case of a licensee that is a corporation, a person acquiring or increasing an interest affecting the control of the corporation while it is a licensee.

Exception

(2) Subsection (1) does not apply if the licence includes a condition as to the ownership or control of the licensee and the contract would not result in a breach of the condition.

Order by Director to take control

17.—(1) Where the Director is of the opinion that an independent health facility should continue to operate after the expiry, surrender, suspension or revocation of the licence, after the death of the licensee or after the licensee ceases to operate the facility, the Director by a written order may take control of and operate the facility for a period not exceeding one year.

Authority of Director

(2) Where the Director takes control of and operates an independent health facility under subsection (1), the Director has all the powers of the licensee and the Director may appoint one or more persons to operate the facility and each person so appointed is a representative of the Director.

Payment for services and compensation for property

(3) Where the Director takes control of an independent health facility, the licensee, former licensee or estate of the licensee, as the case may be,

(a) is not entitled to payment for any service that is provided by the facility while the facility is under the control of the Director; and

(b) is entitled to reasonable compensation from the Crown for the use of property of the licensee, former licensee or estate of the licensee while the facility is under the control of the Director.

Order effective immediately

(4) An order under subsection (1) takes effect immediately and is final.

Revocation and refusal to renew licence

18.—(1) The Director may revoke, suspend or refuse to renew a licence where,

(a) the licensee or any member of the licensee's staff or an employee of the licensee is in contravention of this Act or the regulations or any other Act of the Legislature or of the Parliament of Canada or regulation that applies to the independent health facility or to the licensee, any member of the licensee's staff or an employee of the licensee, as the case may be;

(b) there is a breach of a limitation or condition of the licence;

(c) any person has made a false statement in the proposal submitted to the Director in respect of the independent health facility;

(d) any person has made a false statement in the application for renewal of the licence;

(e) any person has made a false statement in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the independent health facility;

(f) any person has, for the transfer of the licence, paid, transferred, accepted or received money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration;

(g) there is reasonable ground for belief that the independent health facility is not being or will not be operated in accordance with the law and with honesty and integrity;

(h) there is reasonable ground for belief that the independent health facility is not being or will not be operated in a responsible manner in accordance

with this Act or the regulations or any other Act or regulation that applies to the facility;

(i) there is reasonable ground for belief that the independent health facility is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person;

(j) the licensee has ceased operating the independent health facility for a period of at least six months and is not taking reasonable steps to prepare the facility to re-open;

(k) the licensee is a corporation described in subsection 13 (1) that has permitted an issue or transfer contrary to that subsection;

(l) a corporation has failed to make a report or statement to the Director contrary to section 14; or

(m) the licensee has entered into a contract described in section 16 contrary to that section.

Emergency suspension

(2) If the Director is of the opinion upon reasonable grounds that the independent health facility is being operated or will be operated in a manner that poses an immediate threat to the health or safety of any person, the Director by a written order may suspend the licence of the facility.

Order effective immediately

(3) Despite subsections (4) and (5), an order under subsection (2) takes effect immediately.

Notice requiring hearing by Board

(4) The Director shall deliver with the order under subsection (2) notice that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Board where hearing

(5) Subsections 20 (4) and (6) apply with necessary modifications to a suspension under subsection (2).

Minister may direct refusal to renew licence

19.—(1) The Minister may direct the Director in writing to not renew the licence.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Notice to licensee

(3) Upon receipt of a direction under subsection (1), the Director must give written notice to the licensee at least six months before the expiry of the licence that the licence will not be renewed upon expiry pursuant to the Minister's direction.

Petition to Lieutenant Governor in Council

(4) A licensee may, by petition filed with the Clerk of the Executive Council filed within fifteen days after the notice in subsection (3) has been served on the licensee, request that the Lieutenant Governor in Council revoke the direction of the Minister to not renew the licence.

Powers of Lieutenant Governor in Council

(5) Upon receipt of a petition filed under subsection (4), the Lieutenant Governor in Council shall confirm or revoke the direction of the Minister.

Deemed confirmation

(6) If the Lieutenant Governor in Council does not confirm or revoke the direction of the Minister within sixty days after the petition under subsection (4) has been filed, the Lieutenant Governor in Council shall be deemed to have confirmed the direction.

No appeal from refusal to renew licence

(7) Section 20 does not apply to a refusal to renew a licence under this section.

Notice of proposal to revoke or refuse to renew licence

20.—(1) Where the Director proposes to revoke, suspend or refuse to renew a licence under subsection 18 (1), the Director shall serve notice of the proposed action, together with written reasons therefor, on the licensee.

Notice requiring hearing by Board

(2) A notice under subsection (1) shall inform the licensee that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice under subsection (1) is served on the licensee, notice in writ-

ing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Director where no hearing

(3) Where a licensee does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a licensee requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Opportunity to comply

(5) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the retention of the licence and that it would be just and reasonable to give the licensee that opportunity.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Continuation of licence pending renewal

(7) Where, before the expiry of the licence, a licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Notice re consent to transfer a licence

(8) Subsections (1) to (6) apply with necessary modifications where the Director proposes to refuse to consent to the transfer of a licence and, for the purpose,

(a) the Director shall serve the notice under subsection (1) upon both the licensee and the proposed transferee; and

(b) the licensee and the proposed transferee, or either of them, may require the hearing by the Board, but if they each require such a hearing, the Board shall combine the applications into one proceeding.

Parties to hearing before the Board

21.—(1) The Director, the person who has required the hearing and any other person the Board may specify are parties to proceedings before the Board under this Act.

Submissions

(2) The Board may permit any person who is not a party before it to make written or oral submissions to the Board and, where it does so, those submissions may be made either personally or through an agent.

Examination of documentary evidence

(3) A party to proceedings shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(6) The findings of fact of the Board following upon a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980, c. 484

Only members at hearing to participate in decision

(7) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was

present throughout the hearing, heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2) and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of documentary evidence

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to that person by the Board within a reasonable time after the matter in issue has been finally determined.

Appeal from decision of Board

22.—(1) Any party to proceedings before the Board may appeal from its decision or order to the Divisional Court on a question of law alone.

Record to be filed in court

(2) Where any party appeals under subsection (1), the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of court on appeal

(3) On an appeal under subsection (1), the Divisional Court may affirm or may rescind the decision of the Board or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Final decision

(4) The decision of the Divisional Court under this section is final.

Service of notice

23. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.

Payment by Minister

24. The Minister may pay all or part of any one or more of the capital costs of an independent health facility, the operating costs of an independent health facility or the costs of the services provided in an independent health facility according to whatever method of payment the Minister may decide upon.

Appointment of inspectors by Minister

25.—(1) The Minister may appoint in writing one or more persons as inspectors.

Limitation

(2) In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector in such manner as the Minister considers necessary or advisable.

Investigation

(3) Where the Director is of the opinion that it is necessary or advisable that an inspection be made of an independent health facility licensed under this Act to ensure that this Act, the regulations and the limitations and conditions of the licence are being complied with, the Director may direct one or more inspectors appointed by the Minister to make the investigation and to report to the Director.

Duty of inspector

(4) An inspector appointed by the Minister shall make such inspections as the Director requires under subsection (3) and shall make such reports and interim reports in respect of the inspections as are required by the Director.

Notice to Registrar of C.P.S.O.

26.—(1) Where the Director is of the opinion that there is reasonable ground for belief that there is or has been a contravention of section 3, the Director may give notice to the Registrar of the College.

Idem

(2) Where the Director is of the opinion that there is reasonable ground for belief that the quality and standards of service provided in a health facility operated under subsection 7 (3) do not comply with the regulations or, in the absence of regulations, do not conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility, the Director may give notice to the Registrar.

Appointment of inspectors by Registrar

(3) Upon receipt of a notice under subsection (1) or (2), the Registrar shall appoint in writing one or more persons as inspectors to make the inspection.

Notice by inspector

(4) Before making an inspection, an inspector shall give written notice to the person who appears to be in control or management of the health facility.

Progress reports

(5) The Registrar shall report to the Director upon the appointment of the inspector or inspectors and, at the request of the Director, upon the progress of the inspection.

Report to Registrar

(6) An inspector appointed by the Registrar shall make the inspection and shall make such reports and interim reports in respect of the inspection as are required by the Registrar.

Report to Director

(7) The Registrar shall report the result of the inspection to the Director.

Report to College

(8) The Registrar shall also report the result of the inspection to the Executive Committee or such other committee of the College as the Registrar considers appropriate.

Time and form of reports

(9) Reports and interim reports under this section shall be made at such times, in such form, in such detail and with such supporting material as is required by the person or body to whom the report is to be made.

Appointment of assessors

27.—(1) The Registrar may appoint persons in writing as assessors.

Appointment by committee of College

(2) The Council of the College, or a committee established by the Council acting on the direction of the Council, may appoint persons as assessors.

Appointment upon notice

(3) Where the Director considers it necessary or advisable that assessments be carried out of the quality and the standards of services provided in a health facility referred to in subsection 32 (2), the Director may give notice in writing to the chief administrative officer of the governing, registering or licensing body of a health profession or to the licensee or operator of the health facility.

Choice of notice

(4) The Director is not required to give notice to or consult with the licensee or operator of the health facility before giving notice to the chief administrative officer of the governing, registering or licensing body of a health profession.

Appointment of assessor

28.—(1) Upon receipt of notice under section 27, the chief administrative officer of the governing, registering or licensing body of a health profession shall appoint one or more persons in writing as assessors.

Reports to Director

(2) The chief administrative officer shall report to the Director upon the officer's appointments of assessors under subsection (1) and upon the assessments made by them.

Time and form of reports

(3) The chief administrative officer shall make the reports at such times, in such form, in such detail and with such supporting material as is required by the Director.

Notice to operator or licensee

29.—(1) A notice by the Director to the licensee or operator of a health facility under section 27 shall state that the Director intends to require an assessment of the quality and the standards of services provided in the health facility and

that the licensee or operator may consult with the Director in respect of the person or persons to be appointed as assessors.

Appointment of assessor

(2) Where the Director and the licensee or operator agree upon the person or persons to be appointed, the Director may appoint the person or persons to make the assessment.

Qualifications of assessor

(3) An assessor appointed under this section,

(a) must be a physician if the services are provided by a physician in the health facility; and

(b) must not be a public servant within the meaning of the *Public Service Act*.

R.S.O. 1980, c. 418

Reports

(4) An assessor appointed under this section shall report to the Director and to the Registrar in such form, in such detail, with such supporting material and at such times as the Director or the Registrar, or both, requires.

Notice to a chief administrative officer

(5) If the Director and the licensee or operator do not agree upon the person or persons to be appointed, the Director may give notice to the chief administrative officer of the governing, registering or licensing body of a health profession under section 27.

Powers of assessor

30.—(1) An assessor, after giving written notice to the licensee or operator of a health facility, for the purposes of assessing the medical care provided to one or more persons in the health facility, may,

(a) inspect and receive information from medical records or from notes, charts and other material relating to patient care and reproduce and retain copies thereof; and

(b) interview the licensee or operator and members of the staff of the health facility on matters that relate to the quality and standards of service provided in the health facility.

Notice by assessor

(2) A notice under subsection (1) shall, where practicable, state the subject-matter of the interview and the identity, if known, of the person or persons to be interviewed.

Notice by licensee or operator

(3) A licensee or operator who receives written notice under subsection (1) shall forthwith give written notice to each person who may be interviewed of the subject-matter of the interview.

(4) The notice by the licensee or operator shall inform the person that the person is entitled to be represented by legal counsel. Legal representation

31.—(1) It is the function of an assessor to carry out assessments of the quality and the standards of services provided in independent health facilities. Assessment

(2) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an assessor carrying out an assessment of an independent health facility operated by a licensee. Co-operation by licensees

(3) The co-operation required of a licensee includes, Idem

(a) permitting the assessor to enter and inspect the premises of the independent health facility;

(b) permitting the assessor to inspect records, including patient records;

(c) providing to the assessor information requested by the assessor in respect of records, including patient records, or the care of patients in the independent health facility;

(d) providing the information mentioned in clause (c) in the form requested by the assessor;

(e) permitting the assessor to make or take and remove samples of any substance on the premises of the independent health facility;

(f) providing samples mentioned in clause (e) as requested by the assessor; and

(g) conferring with the assessor when requested to do so by the assessor.

32.—(1) An inspector appointed by the Registrar may, at any reasonable time, without a warrant, enter any premises of a health facility to make an inspection, Inspection of health facilities

(a) in respect of a health facility operated by a person not licensed under this Act, to determine whether there is or has been a contravention of section 3; and

(b) in respect of a health facility operated under subsection 7 (3) by a person not licensed under this

Act, to ensure that the quality and standards of services provided in the facility comply with the regulations or, in the absence of regulations, conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility.

Inspector appointed by Minister

(2) An inspector appointed by the Minister may, at any reasonable time, without a warrant, enter any premises of an independent health facility operated by a person licensed under this Act, to make an inspection to ensure that this Act and the regulations, and the limitations and conditions, if any, of the licence, are being complied with.

Search of premises other than health facilities

(3) Where an inspector has reasonable ground to believe that there is in any premises, other than a health facility, any thing that there is reasonable ground to believe will afford evidence as to the commission of an offence under this Act or in relation to the establishment or operation of an independent health facility licensed under this Act, the inspector may apply under section 142 of the *Provincial Offences Act* for a warrant to enter and search the premises.

R.S.O. 1980, c. 400

Private residence

(4) Subsection (1) is not authority to enter a private residence without the consent of an occupier, except under the authority of a warrant under section 33.

Exempt health facilities

(5) Subsection (1) is authority to enter a health facility that is, under section 2, otherwise exempt from the application of this Act.

Powers on inspection

(6) Upon an inspection under this section, the inspector,

(a) has the right to inspect the premises and the operations carried out on the premises;

(b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment, patient and drug records and any other records that are relevant for the purposes of the inspection, regardless of the form or medium in which such records are kept, but if such books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;

(c) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment

issued by the Minister, any material referred to in clause (b) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that the material is promptly returned to the person apparently in charge of the premises from which the material was removed;

(d) has the right, at any reasonable time, to make and take or require to be made or taken samples of any substance on the premises;

(e) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any sample referred to in clause (d) that relates to the purpose of the inspection for the purpose of making an analysis thereof; and

(f) may question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination.

Co-operation by licensees

(7) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an inspector carrying out an inspection of an independent health facility operated by a licensee.

Warrant to enter and inspect

33.—(1) A provincial judge or justice of the peace may issue a warrant in the form prescribed by the regulations where the judge or justice is satisfied upon application by an inspector, on information upon oath, that there is reasonable ground for believing that it is necessary to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) in respect of a health facility and,

(a) no occupier is present to grant access to a premises that is locked or otherwise inaccessible;

(b) no occupier is present to grant access to a private residence; or

(c) an occupier of the premises,

(i) has denied an inspector entry to the premises,

(ii) has instructed an inspector to leave the premises,

(iii) has obstructed an inspector,

(iv) has refused to produce to an inspector any material referred to in clause 32 (6) (b), or

(v) has refused to make or take a sample as required in clause 32 (6) (d).

Authority given by warrant

(2) A warrant issued under subsection (1) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officer or officers as the inspector calls upon for assistance, to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) and specified in the warrant.

Execution of warrant

(3) A warrant issued under subsection (1) shall be executed at reasonable times.

Expiry of warrant

(4) A warrant issued under subsection (1) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application without notice

(5) A provincial judge or justice of the peace may receive and consider an application for a warrant under subsection (1) without notice to and in the absence of the owner or occupier of the premises.

Admissibility of copies

34.—(1) Copies of material removed from premises under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the material of which they are copies.

Analysis report as evidence

(2) A certificate or report of an analysis of a sample removed from premises under this Act that purports to be signed by the laboratory technician who carried out the analysis shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate or report without proof of the signature or position of the person appearing to have signed the certificate or report.

Obstruction of inspector

35. No person shall obstruct an inspector or withhold or conceal from an inspector any book, document, correspondence, record or thing relevant to the subject-matter of an inspection.

Definitions

36.—(1) In this section,

R.S.O. 1980, c. 197

"Board" means the Health Services Appeal Board under the *Health Insurance Act*;

"Plan" means the Ontario Health Insurance Plan referred to in section 10 of the *Health Insurance Act*.

Plan to reimburse facility fee

(2) Where the Director is satisfied that a person has paid a facility fee all or part of which was charged in contravention of section 3, the Director may direct that the amount of the facility fee that was charged in contravention of section 3 be paid to the person out of the Plan.

Fee is debt to Plan

(3) The person who charged the facility fee referred to in subsection (2) is indebted to the Plan for an amount equal to the amount paid out of the Plan under subsection (2) and the administrative charge prescribed by the regulations.

Set-off against Plan

(4) If the person who charged the facility fee referred to in subsection (2) is a person who submits accounts directly to the Plan, then, subject to subsections (5), (6) and (8), part or all of the money owed to the Plan under subsection (3) may be recovered by set-off against any money payable to the person by the Plan.

Notice of proposed set-off

(5) The Director shall serve notice of the proposed set-off referred to in subsection (4), together with written reasons therefor, on the person who is indebted to the Plan.

Notice requiring hearing by Board

(6) A notice under subsection (5) shall inform the person that he or she is entitled to a hearing by the Board if the person mails or delivers, within fifteen days after the notice under subsection (5) is served on the person, notice in writing requiring a hearing to the Director and the Board, and the person may so require a hearing.

Powers where no hearing

(7) Where a person does not require a hearing by the Board in accordance with subsection (6), the proposed set-off stated in the notice under subsection (5) may be carried out.

Powers of Board where hearing

(8) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct that the proposed set-off be carried out or refrained from being carried out, and for such purposes, the Board may substitute its opinion for that of the Director.

Extension of time for requiring hearing

(9) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

ss. 21, 22 apply

(10) Sections 21 and 22 apply with necessary modifications to a hearing and decision by the Board under this section.

Disclosure of information R.S.O. 1980, c. 197

(11) Despite subsection 44 (1) of the *Health Insurance Act*, the General Manager may furnish to,

(a) a member of the Board;

(b) the person who was charged or who paid the facility fee;

(c) the person who charged or accepted payment of the facility fee and counsel for the person;

(d) any person engaged in the administration of this Act or the regulations or any proceedings under this Act or the regulations;

(e) any other person with the consent of the person to whom the services were provided in respect of which the facility fee was charged,

information pertaining to the nature of the services provided, the date or dates on which the services were provided and for whom, the name and address of the person who provided the services, the amounts paid or payable by the Plan for such services, and the persons to whom the fee for the insured service and the facility fee were paid or are payable, for the purpose of this section.

Definition

37.—(1) In this section, "confidential information" means information obtained by a person employed in the administration of this Act or making an assessment or inspection under this Act in the course of the person's employment, assessment or inspection and that relates to a patient or former patient of a health facility.

Confidentiality of information

(2) No person shall communicate confidential information to any person except in accordance with subsection (4).

Application

(3) Subsection (2) applies to any person whether or not the person is or was employed in the administration of this Act or is or was an inspector or assessor under this Act.

Communication of confidential information

(4) A person employed in the admininstration of this Act, an assessor or inspector under this Act or any person who obtains confidential information pursuant to this subsection may communicate confidential information,

(a) in connection with the administration or enforcement of any Act or any proceedings under any Act;

(b) in connection with matters relating to professional disciplinary proceedings, to a statutory body governing a health profession;

(c) to the person's counsel; or

(d) with the consent of the patient or former patient to whom the information relates.

Testimony by officials in civil suits

(5) No person employed in the administration of this Act or who made an inspection or assessment under this Act shall be required to give testimony in a civil action or proceeding with respect to any information obtained in the course of the person's employment, assessment or inspection except in a proceeding under an Act or a regulation under an Act.

Closed proceedings

(6) A provincial offences court may exclude the public from proceedings to enforce any Act if the court is of the opinion that confidential information may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of that information in the interests of any patient or former patient to whom it relates outweighs the desirability of adhering to the principle that hearings be open to the public.

Immunity

38. No action or other proceeding for damages shall be commenced against an inspector, an assessor, the Director, the Registrar, the Council of the College or a committee established by the Council, the Board, or a member of the Council, the committee or the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or the regulations, or for any neglect or default in the performance or exercise in good faith of such power or duty.

Offences

39.—(1) Every person who contravenes section 3, 11, 35 or 37 is guilty of an offence.

Corporate offences

(2) Every person who contravenes section 13, 14, 15 or 16 is guilty of an offence.

Breach of regulations

(3) Every person who contravenes the regulations is guilty of an offence.

Penalty

(4) Every person who is guilty of an offence under this section is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more

than $5,000 on a first conviction and not more than $10,000 on each subsequent conviction.

Corporation

(5) Where a corporation is convicted of an offence under this section, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is $25,000 on a first conviction and $50,000 on each subsequent conviction, and not as provided in subsection (4).

Penalty

(6) Every person who is guilty of an offence under this section for contravention of section 11 or subsection 13 (2) is liable on conviction, in addition to any fine under subsection (4) or (5), to a fine not exceeding the amount of money or the value of the consideration paid, transferred, accepted or received in contravention of section 11 or subsection 13 (2).

Restraining order

40.—(1) In addition to any other remedy and to any penalty imposed by law, a contravention of section 3 may be restrained by action at the instance of the Attorney General.

Restraining order upon conviction

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the action that constitutes the offence.

Annual Report

41. The Minister shall annually prepare a report on the implementation of this Act and submit it to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Regulations

42.—(1) The Lieutenant Governor in Council may make regulations,

1. exempting any health facility or class of health facility from the application of this Act or the regulations or any provision thereof;

2. governing the process for submitting proposals;

3. governing applications for renewals of licences;

4. prescribing forms and providing for their use;

5. prescribing fees for licences, for transfers of licences and for renewals of licences;

6. classifying health facilities or independent health facilities;

7. respecting and governing the care, treatment and services provided in independent health facilities or any class thereof;

8. prescribing and governing the quality and the standards of services provided in independent health facilities or any class thereof;

9. prescribing and governing the quality and the standards of independent health facilities or any class thereof;

10. prescribing and governing the requirements for staff and employees of independent health facilities or any class thereof;

11. prescribing and governing the construction, establishment, location, equipment, maintenance and repair of, additions and alterations to, and operations of independent health facilities or any class thereof;

12. prescribing the books, records and accounts that shall be kept by licensees including their form and content and the place or places where they shall be kept;

13. requiring the accounts of independent health facilities to be audited and requiring the licensees to furnish such information or accounts as may be required by the Director;

14. prescribing and governing the records that shall be kept by licensees with respect to the care and treatment of patients of the independent health facility;

15. governing the reports and returns that shall be made to the Director by licensees;

16. requiring and governing the system or systems that shall be kept by licensees to monitor the results of the services provided in independent health facilities or any class thereof;

17. governing access to patient or drug records and specifying persons who may have access to such records;

18. prescribing other duties of assessors;

19. prescribing other duties of inspectors;

20. classifying services;

21. exempting any service or class of service from the application of this Act or the regulations or any provision thereof;

22. prescribing services, classes of services and operating costs that are not part of an insured service and that do not support, assist and are not a necessary adjunct, or any of them, to an insured service;

23. prescribing services, classes of services and operating costs that are part of the insured service;

24. prescribing any services, any classes of services and any operating costs that are not part of an insured service and that support, assist and are a necessary adjunct, or any of them, to the insured service;

25. prescribing the maximum amount a person may charge for services or operating costs prescribed under paragraph 24;

26. prescribing conditions that shall attach to licences of independent health facilities or any class or classes thereof;

27. prescribing administrative charges for the purposes of section 36;

28. governing and restricting the disposition and transfer of the assets of independent health facilities;

29. prescribing the maximum allowable consideration in relation to a licence or prescribing a method for determining the maximum allowable consideration;

30. prescribing the allocation of the maximum allowable consideration in relation to a licence held by a corporation among the shares of the corporation or prescribing a method for determining the allocation;

31. making any regulation made under paragraphs 1 to 30 applicable to independent health facilities operated under subsection 7 (3) or to the persons who operate the facilities;

32. exempting any person who operates a health facility that is approved, licenced or designated under any other Act or any class of such persons from the application of this Act or the regulations or any provision thereof.

Scope of regulations

(2) A regulation may be general or particular in its application.

Delegation in regulations

(3) In a regulation made under paragraph 29 or 30, the Lieutenant Governor in Council may delegate the determination of any matter to the Minister or persons the Minister may designate in writing.

COMPLEMENTARY AMENDMENT

43.—(1) Subsection 51 (1) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

(ja) prescribing constitutent elements that are part of insured services rendered by physicians or by practitioners;

(jb) prescribing constitutent elements that shall be deemed not to be part of insured services rendered by physicians or by practitioners.

(2) Section 51 of the said Act is amended by adding thereto the following subsection:

Services designated without prescribing amounts payable

(4) The Lieutenant Governor in Council may make regulations under clause (1) (j) prescribing services that are insured services without prescribing any amounts payable by the Plan for those services.

(3) Section 51 of the said Act is further amended by adding thereto the following subsection:

Fees related to independent health facilities

R.S.O. 1980, c. 410

1989, c. ...

(5) A regulation may prescribe an amount payable by the Plan for an insured service rendered in a hospital that has been approved under the *Public Hospitals Act* without prescribing an amount payable if the service is rendered in a health facility operated by a person to whom subsection 7 (7) of the *Independent Health Facilities Act, 1989* applies.

Commencement

44. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

45. The short title of this Act is the *Independent Health Facilities Act, 1989*.

Government Publications

2ND SESSION, 34TH LEGISLATURE, ONTARIO 38 ELIZABETH II, 1989

Bill 147

(Chapter 59
Statutes of Ontario, 1989)

An Act respecting Independent Health Facilities

The Hon. E. Caplan
Minister of Health

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1st Reading	June 2nd, 1988
2nd Reading	February 22nd, 1989
3rd Reading	November 22nd, 1989
Royal Assent	November 23rd, 1989

Continued from the 1st Session by an Order of the Legislative Assembly of March 2nd, 1989.

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Bill 147 1989

An Act respecting Independent Health Facilities

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act, Definitions

"assessor" means an assessor appointed under section 27 or 29;

"Board", except in section 36, means the Health Facilities Appeal Board under the *Ambulance Act*; R.S.O. 1980, c. 20

"College" means the College of Physicians and Surgeons of Ontario;

"Director" means the Director appointed under section 4;

"facility fee" means a charge or a fee for or in respect of a service or operating cost that,

(a) supports, assists and is a necessary adjunct, or any of them, to an insured service, and

(b) is not part of the insured service;

"health facility" means a place in which one or more members of the public receive health services and includes an independent health facility;

"independent health facility" means a health facility in which one or more members of the public receive services that are insured services and for which facility fees are charged, but does not include a health facility mentioned in section 2;

"inspector" means an inspector appointed under section 25 or 26;

"insured person" has the same meaning as in the *Health Insurance Act*; R.S.O. 1980, c. 197

"insured service" means,

(a) a service rendered by a physician for which an amount payable is prescribed by the regulations under the *Health Insurance Act*, or

R.S.O. 1980, c. 197

(b) a service prescribed as an insured service under the *Health Insurance Act* rendered by a practitioner within the meaning of that Act;

"licence" means a licence issued by the Director under this Act;

"maximum allowable consideration", in relation to a licence for an independent health facility, means,

(a) if section 7 applied with respect to the facility at the time it came into force, the amount prescribed by the regulations or determined by the method prescribed by the regulations, or

(b) in any other case, zero;

"medical care" means health care;

"medical record" means a record relating to health services;

"Minister" means the Minister of Health;

"Ministry" means the Ministry of Health;

"patient" means a person who receives health services in a health facility;

"physician" means a legally qualified medical practitioner;

"Registrar" means the Registrar of the College of Physicians and Surgeons of Ontario;

"regulations" means regulations made under this Act;

"voting share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of a contingency that has occurred and is continuing.

Interest affecting the control of a corporation

(2) A person shall be deemed to have an interest affecting the control of a corporation if the person alone or with one or

more associates directly or indirectly beneficially owns or controls the lesser of,

(a) voting shares in the corporation in a sufficient number to permit that person either alone or with one or more associates to direct the management and policies of the corporation; or

(b) voting shares to which are attached 10 per cent or more of the voting rights attached to all issued and outstanding voting shares of the corporation.

Associates

(3) Persons shall be deemed to be associates of each other if,

(a) one person is a corporation of which the other person is an officer or director;

(b) one person is a partner of the other person;

(c) one person is a corporation of which the other person beneficially owns, directly or indirectly, voting shares carrying more than 10 per cent of the voting rights attached to all voting shares of the corporation for the time being outstanding;

(d) both persons are members of a voting trust where the trust relates to shares of a corporation;

(e) one person is the father, mother, brother, sister, child or spouse of the other person or is another relative who has the same home as the other person; or

(f) both persons are associates within the meaning of clauses (a) to (e) of the same person.

Corporations without share capital

(4) For the purposes of this Act, the provisions of this Act related to corporations, their control, and the ownership, control and voting of shares apply with necessary modifications in respect of corporations to which Part III of the *Corporations Act* applies.

R.S.O. 1980, c. 95

Application of Act

2. This Act does not apply to the following health facilities, persons, places or services:

1. An office or place in which one or more persons provide services in the course of the practice of a health profession,

i. for or in respect of which the only charges made for insured services are for amounts paid or payable by the Plan as defined in the *Health Insurance Act*, and

R.S.O. 1980, c. 197

ii. for or in respect of which no facility fee is requested from or paid by the Province or any person.

2. A service or class of services that is exempt by the regulations.

3. A health facility or class of health facilities that is exempt by the regulations.

4. A person who is or a class of persons that is exempt by the regulations.

Licence required

3.—(1) No person shall establish or operate an independent health facility except under the authority of a licence issued by the Director.

Charge for facility fee

(2) No person shall charge or accept payment of a facility fee in respect of an insured service provided in an independent health facility unless the facility is operated by a person licensed under this Act.

Idem

(3) No person shall charge an insured person a facility fee in respect of an insured service provided in an independent health facility operated by a person licensed under this Act.

Application of subs. (2)

(4) Subsection (2) does not apply to prevent a person from charging a facility fee to or accepting payment of a facility fee from a person who is not an insured person.

Director

4. The Minister shall appoint an employee of the Ministry to be the Director of Independent Health Facilities.

Request for proposals

5.—(1) The Minister may request proposals for the establishment and operation of an independent health facility.

Matters to be considered

(2) In deciding whether or not to request proposals, the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Contents of request

(3) A request for proposals shall specify,

(a) the service or services to be provided in the independent health facility;

(b) the locality in which the independent health facility is to be located;

(c) such other requirements and limitations as the Minister considers relevant; and

(d) the final date for submission of proposals.

Submission of proposals

(4) Persons interested in establishing and operating an independent health facility in response to a request for proposals may submit proposals therefor to the Director.

Contents of proposal

(5) A proposal shall set out,

(a) the business and professional experience of the person submitting the proposal;

(b) details of the physical nature of the proposed facility;

(c) the nature of the service or services to be provided in the facility;

(d) the projected cost for the operation of the facility;

(e) details of the system that will be established to ensure the monitoring of the results of the service or services to be provided in the facility;

(f) details of the professional and other staff proposed for the facility;

(g) such other information as is relevant to the requirements and limitations specified in the request for proposals.

Consideration of proposals

(6) The Director shall consider the proposals and may request additional information in respect of any proposal.

Issuance of licence

6.—(1) Subject to section 8, the Director may issue a licence to a person who has submitted a proposal for the establishment and operation of an independent health facility where the Director is of the opinion,

(a) that the proposal meets the criteria specified in the request for proposals;

(b) that the quality and the standards of the independent health facility or of the service or services to be provided in the facility will comply with the regulations or, in the absence of regulations, will conform to the generally accepted quality and standards for the facility and the service or services to be provided in the facility;

(c) that the person will operate the independent health facility competently and with honesty and integrity; and

(d) that the person will establish and maintain a system to ensure the monitoring of the results of the service or services provided in the independent health facility.

Discretion

(2) The issuance of a licence to a person who meets the requirements of subsection (1) is discretionary in the Director and, despite a request for proposals or negotiations in respect of a proposal, the Director,

(a) is not required to issue a licence to any person; and

(b) may prefer any proposal over other proposals.

Preference to non-profit facilities, Canadian licensees

(3) Despite any international treaty or obligation to which Canada is a party or any law implementing such a treaty or obligation and without restricting the generality of subsection (2), the Director shall give preference to proposals that indicate,

(a) that the independent health facility will be operated on a non-profit basis; and

(b) that the person who has submitted the proposal for the establishment and the operation of the facility is,

(i) a Canadian citizen ordinarily resident in Canada,

(ii) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada, R.S.C. 1985, c. I-2

(iii) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i) or (ii), or

(iv) a corporation controlled, whether through the ownership of voting shares or otherwise, by one or more persons described in subclause (i), (ii) or (iii).

Non-profit basis

(4) For the purpose of clause (3) (a), an independent health facility is operated on a non-profit basis if the profit derived from the operation of the facility is used exclusively in the further operation of the facility and no part of the profit is payable to, or is otherwise available for, the personal benefit of any person.

Limitations and conditions

(5) The Director may issue a licence subject to such limitations and conditions as the Director considers necessary in the circumstances.

Transitional

7.—(1) A person who operated an independent health facility on the 2nd day of June, 1988 may, within one year after the date on which this section comes into force, submit a proposal for a licence to continue to operate the facility, as if the Minister had requested proposals under subsection 5 (1).

Idem

(2) Subsections 5 (4), (5) and (6) and sections 6, 8 and 9 apply with necessary modifications to a proposal referred to in subsection (1).

Existing facilities may operate and bill directly

(3) Despite section 3, a person who operated an independent health facility on the 2nd day of June, 1988 may continue to operate the facility without a licence and to charge and accept payment from any person of a facility fee in respect of an insured service provided in the facility,

(a) where the person does not submit a proposal under subsection (1), for one year after the date on which this section comes into force;

(b) where the person submits a proposal and is served with notice that the Director proposes to issue a licence to the person, until the person is issued the licence; or

(c) where the person submits a proposal and is served with notice that the Director proposes to not issue a licence to the person, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Regulations may apply

(4) Any regulation that applies to independent health facilities operated by persons licensed under this Act or to licensees may be made applicable to independent health facilities operated under subsection (3) or to the persons who operate the facilities, as the case may be.

Notice that subs. (3) does not apply

(5) Where the Director has reasonable and probable ground to believe that an independent health facility referred to in subsection (3) is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person, the Director may by a written notice direct the person who operates the facility that subsection (3) does not apply to the facility effective on the date specified in the notice.

Order is final

(6) An order under subsection (5) is final.

Transitional

(7) This section applies with necessary modifications to a person as though the person operated an independent health facility on the 2nd day of June, 1988, if the person, before the coming into force of this section, was operating a health facility and charging fees that were set out in a column denoted by the letter "T" in Regulation 452 of Revised Regulations of Ontario, 1980 made under the *Health Insurance Act* and if, before this section comes into force, those regulations are amended so that those fees are no longer set out in such a column.

R.S.O. 1980, c. 197

Idem

(8) Subsection (3) does not apply to allow a person to charge an insured person a fee, or accept from an insured per-

son payment of a fee, for a service if, before this section comes into force,

(a) there was a fee for the service set out in a column described in subsection (7); and

(b) the regulation described in subsection (7) is amended so that a fee for the service is no longer payable under the regulation.

Notice of proposal to refuse licence

8.—(1) Where the Director proposes to issue a licence under subsection 6 (1) or to refuse to issue a licence to any person, the Director shall serve notice of the proposed action on every person who submitted a proposal for a licence.

Contents of notice

(2) A notice under subsection (1) shall inform the person on whom it is served that the person is entitled to,

(a) written reasons for the proposal if a request is received by the Director within seven days of the receipt by the person of the notice of the proposal, and the person may so require the written reasons; and

(b) a hearing by the Board if the person mails or delivers, within fifteen days after receipt by the person of the written reasons, a written request and the person may so require the hearing.

Powers of Director where no hearing

(3) Where no person requires a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations.

Idem

(5) For the purposes of subsection (4), the Board may substitute its opinion for that of the Director, but the Board may not direct the Director to do anything that is contrary to the criteria specified in the request for proposals.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for

applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Minister may direct refusal to issue licence

9.—(1) At any time after the Minister requests proposals for the establishment and operation of an independent health facility and before a licence is issued, the Minister may direct the Director in writing to not issue any licence in respect of the request for proposals.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Director shall refuse to issue licence

(3) Upon receipt of a direction under subsection (1), the Director shall refuse to issue any licence in respect of the request for proposals and shall give written notice to every person who submitted a proposal of the refusal and of the Minister's direction.

Public notice

(4) Where the Minister issues a direction before the final date for submission of proposals, the Director shall publish notice of the direction in the same manner as the Minister's request for proposals.

No appeal from refusal to issue licence

(5) Section 8 does not apply to a refusal to issue a licence under this section.

Special situation

10.—(1) Where the Minister is of the opinion that it is essential that an independent health facility for which proposals have been requested be established without delay, and any person has required a hearing by the Board in respect of a proposal by the Director to issue or to refuse to issue a

licence, the Minister may direct the Director in writing to carry out the proposal forthwith.

Action by Director

(2) The Director shall carry out the direction and shall give written notice to the person who required the hearing.

Notice

(3) The Director's notice shall inform the person of the Minister's direction, of the action to be taken by the Director and of the person's right to proceed with the hearing before the Board.

Application of s. 8

(4) Section 8 does not apply to prevent the Minister or the Director from acting under this section.

Power of Board

(5) The Board, in an order under section 8, may require the Director to issue a licence to an applicant despite the issuance of a licence to any other person.

Transfer of licence

11.—(1) A licence is not transferable without the consent of the Director.

Criteria

(2) In deciding whether to consent to the transfer of a licence,

(a) the Director shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence and for the purpose subsection 6 (1), other than clause 6 (1) (a), applies with necessary modifications; and

(b) the Director shall apply the principle that consent shall be refused if there are reasonable grounds to believe that money or other consideration, other than the prescribed fee and an amount not exceeding the maximum allowable consideration, has been or will be paid, transferred, accepted or received for the transfer of the licence.

Restrictions on consideration for transfers

(3) No person shall, for the transfer of a licence, pay, transfer, accept or receive money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration.

Duty of directors

(4) Every director of a corporation that transfers a licence shall take all reasonable care to ensure that, for the transfer of the licence, no money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration is paid, transferred, accepted or received.

Limitations and conditions

(5) In consenting to the transfer of a licence, the Director may attach to the licence such limitations and conditions as the Director considers necessary in the circumstances.

Expiry of licence

12. Every licence expires on the date specified on the licence, which shall not be later than the fifth anniversary of its issuance or renewal, unless it is revoked or is surrendered to the Director before that date.

Share transfer R.S.O. 1980, c. 466

13.—(1) A licensee that is a private company as defined in the *Securities Act* shall not permit an issue or transfer of its voting shares that may result in a person acquiring or increasing an interest affecting its control while it is a licensee unless its licence includes a condition as to the ownership or control of the licensee and such issue or transfer of voting shares would not result in a breach of that condition.

Restrictions on consideration for licence in share transfer

(2) No person shall pay, transfer, accept or receive, in respect of a transfer of shares of a corporation that is a licensee, money or other consideration that can reasonably be regarded as referable to the licence held by the corporation other than an amount not exceeding the portion of the maximum allowable consideration allocated to the shares as prescribed by the regulations.

Duty of corporation to notify Director

14.—(1) A licensee that is a corporation shall notify the Director in writing within fifteen days of any change in the officers or directors of the corporation.

Idem

(2) Where a corporation has an interest in a licence and there is reasonable ground for belief that an event will occur whereby a person would acquire an interest or increase an interest affecting the control of the corporation while the corporation has an interest in the licence, the corporation shall so notify the Director forthwith.

Statement required

(3) The Director annually, in writing, shall direct a corporation that has an interest in a licence to provide the names and addresses of all of the officers and directors of the corporation and a statement concerning the ownership or beneficial ownership of voting shares in the corporation, which statement shall contain the information that, in the opinion of the Director, is reasonably necessary to enable the Director to determine,

(a) what persons, if any, have interests affecting the control of the corporation; and

(b) what persons, if any, have interests affecting the control of a person mentioned in clause (a) that is a corporation.

Idem

(4) The Director may require the information described in subsection (3) to be provided more frequently than annually if, in the opinion of the Director, it is reasonably necessary for the purposes set out in subsection (3).

Licence not to be used as security

15. A licence shall not be used as security for the payment or performance of an obligation, and any transaction purporting to use a licence as security for the payment or performance of an obligation is void.

Contracts

16.—(1) A licensee shall not enter into a contract that may result in,

(a) a change in the beneficial ownership of the licence without a corresponding transfer of the licence; or

(b) in the case of a licensee that is a corporation, a person acquiring or increasing an interest affecting the control of the corporation while it is a licensee.

Exception

(2) Subsection (1) does not apply if the licence includes a condition as to the ownership or control of the licensee and the contract would not result in a breach of the condition.

Order by Director to take control

17.—(1) Where the Director is of the opinion that an independent health facility should continue to operate after the expiry, surrender, suspension or revocation of the licence, after the death of the licensee or after the licensee ceases to operate the facility, the Director by a written order may take control of and operate the facility for a period not exceeding one year.

Authority of Director

(2) Where the Director takes control of and operates an independent health facility under subsection (1), the Director has all the powers of the licensee and the Director may appoint one or more persons to operate the facility and each person so appointed is a representative of the Director.

Payment for services and compensation for property

(3) Where the Director takes control of an independent health facility, the licensee, former licensee or estate of the licensee, as the case may be,

(a) is not entitled to payment for any service that is provided by the facility while the facility is under the control of the Director; and

(b) is entitled to reasonable compensation from the Crown for the use of property of the licensee, former licensee or estate of the licensee while the facility is under the control of the Director.

Order effective immediately

(4) An order under subsection (1) takes effect immediately and is final.

Revocation and refusal to renew licence

18.—(1) The Director may revoke, suspend or refuse to renew a licence where,

(a) the licensee or any member of the licensee's staff or an employee of the licensee is in contravention of this Act or the regulations or any other Act of the Legislature or of the Parliament of Canada or regulation that applies to the independent health facility or to the licensee, any member of the licensee's staff or an employee of the licensee, as the case may be;

(b) there is a breach of a limitation or condition of the licence;

(c) any person has made a false statement in the proposal submitted to the Director in respect of the independent health facility;

(d) any person has made a false statement in the application for renewal of the licence;

(e) any person has made a false statement in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the independent health facility;

(f) any person has, for the transfer of the licence, paid, transferred, accepted or received money or other consideration other than the prescribed fee and an amount not exceeding the maximum allowable consideration;

(g) there is reasonable ground for belief that the independent health facility is not being or will not be operated in accordance with the law and with honesty and integrity;

(h) there is reasonable ground for belief that the independent health facility is not being or will not be operated in a responsible manner in accordance

with this Act or the regulations or any other Act or regulation that applies to the facility;

(i) there is reasonable ground for belief that the independent health facility is being operated or will be operated in a manner that is prejudicial to the health, safety or welfare of any person;

(j) the licensee has ceased operating the independent health facility for a period of at least six months and is not taking reasonable steps to prepare the facility to re-open;

(k) the licensee is a corporation described in subsection 13 (1) that has permitted an issue or transfer contrary to that subsection;

(l) a corporation has failed to make a report or statement to the Director contrary to section 14; or

(m) the licensee has entered into a contract described in section 16 contrary to that section.

Emergency suspension

(2) If the Director is of the opinion upon reasonable grounds that the independent health facility is being operated or will be operated in a manner that poses an immediate threat to the health or safety of any person, the Director by a written order may suspend the licence of the facility.

Order effective immediately

(3) Despite subsections (4) and (5), an order under subsection (2) takes effect immediately.

Notice requiring hearing by Board

(4) The Director shall deliver with the order under subsection (2) notice that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice is served on the licensee, notice in writing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Board where hearing

(5) Subsections 20 (4) and (6) apply with necessary modifications to a suspension under subsection (2).

Minister may direct refusal to renew licence

19.—(1) The Minister may direct the Director in writing to not renew the licence.

Matters to be considered

(2) In deciding whether or not to issue a direction under subsection (1), the Minister shall consider,

(a) the nature of the service or services provided or to be provided in the independent health facility;

(b) the extent to which the service or services is already available in Ontario or any part of Ontario;

(c) the need for the service or services in Ontario or any part of Ontario;

(d) the future need for the service or services in Ontario or any part of Ontario;

(e) the projected cost in public moneys for the operation of the independent health facility; and

(f) the availability of public moneys to pay for the operation of the independent health facility.

Notice to licensee

(3) Upon receipt of a direction under subsection (1), the Director must give written notice to the licensee at least six months before the expiry of the licence that the licence will not be renewed upon expiry pursuant to the Minister's direction.

Petition to Lieutenant Governor in Council

(4) A licensee may, by petition filed with the Clerk of the Executive Council filed within fifteen days after the notice in subsection (3) has been served on the licensee, request that the Lieutenant Governor in Council revoke the direction of the Minister to not renew the licence.

Powers of Lieutenant Governor in Council

(5) Upon receipt of a petition filed under subsection (4), the Lieutenant Governor in Council shall confirm or revoke the direction of the Minister.

Deemed confirmation

(6) If the Lieutenant Governor in Council does not confirm or revoke the direction of the Minister within sixty days after the petition under subsection (4) has been filed, the Lieutenant Governor in Council shall be deemed to have confirmed the direction.

No appeal from refusal to renew licence

(7) Section 20 does not apply to a refusal to renew a licence under this section.

Notice of proposal to revoke or refuse to renew licence

20.—(1) Where the Director proposes to revoke, suspend or refuse to renew a licence under subsection 18 (1), the Director shall serve notice of the proposed action, together with written reasons therefor, on the licensee.

Notice requiring hearing by Board

(2) A notice under subsection (1) shall inform the licensee that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice under subsection (1) is served on the licensee, notice in writ-

ing requiring a hearing to the Director and the Board, and the licensee may so require such a hearing.

Powers of Director where no hearing

(3) Where a licensee does not require a hearing by the Board in accordance with subsection (2), the Director may carry out the proposed action stated in the notice under subsection (1).

Powers of Board where hearing

(4) Where a licensee requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct the Director to carry out the proposed action or refrain from carrying out the proposed action and to take such action as the Board considers the Director ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Director.

Opportunity to comply

(5) Where the Board is required to hold a hearing, it shall proceed forthwith to hold the hearing unless the licensee satisfies the Board that the licensee has not been given a reasonable opportunity to comply with all the lawful requirements for the retention of the licence and that it would be just and reasonable to give the licensee that opportunity.

Extension of time for requiring hearing

(6) The Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the licensee following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Continuation of licence pending renewal

(7) Where, before the expiry of the licence, a licensee has applied for renewal of the licence and paid the prescribed fee, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the time for giving notice requiring an appeal from the decision or order of the Board has expired and, where an appeal is required, until the matter in issue has been finally determined.

Notice re consent to transfer a licence

(8) Subsections (1) to (6) apply with necessary modifications where the Director proposes to refuse to consent to the transfer of a licence and, for the purpose,

(a) the Director shall serve the notice under subsection (1) upon both the licensee and the proposed transferee; and

(b) the licensee and the proposed transferee, or either of them, may require the hearing by the Board, but if they each require such a hearing, the Board shall combine the applications into one proceeding.

Parties to hearing before the Board

21.—(1) The Director, the person who has required the hearing and any other person the Board may specify are parties to proceedings before the Board under this Act.

Submissions

(2) The Board may permit any person who is not a party before it to make written or oral submissions to the Board and, where it does so, those submissions may be made either personally or through an agent.

Examination of documentary evidence

(3) A party to proceedings shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(6) The findings of fact of the Board following upon a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980, c. 484

Only members at hearing to participate in decision

(7) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was

present throughout the hearing, heard the evidence and argument of the parties and read or heard any written or oral submissions made under subsection (2) and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of documentary evidence

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to that person by the Board within a reasonable time after the matter in issue has been finally determined.

Appeal from decision of Board

22.—(1) Any party to proceedings before the Board may appeal from its decision or order to the Divisional Court on a question of law alone.

Record to be filed in court

(2) Where any party appeals under subsection (1), the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of court on appeal

(3) On an appeal under subsection (1), the Divisional Court may affirm or may rescind the decision of the Board or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Final decision

(4) The decision of the Divisional Court under this section is final.

Service of notice

23. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at the person's last known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date.

Payment by Minister

24. The Minister may pay all or part of any one or more of the capital costs of an independent health facility, the operating costs of an independent health facility or the costs of the services provided in an independent health facility according to whatever method of payment the Minister may decide upon.

Appointment of inspectors by Minister

25.—(1) The Minister may appoint in writing one or more persons as inspectors.

Limitation

(2) In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector in such manner as the Minister considers necessary or advisable.

Investigation

(3) Where the Director is of the opinion that it is necessary or advisable that an inspection be made of an independent health facility licensed under this Act to ensure that this Act, the regulations and the limitations and conditions of the licence are being complied with, the Director may direct one or more inspectors appointed by the Minister to make the investigation and to report to the Director.

Duty of inspector

(4) An inspector appointed by the Minister shall make such inspections as the Director requires under subsection (3) and shall make such reports and interim reports in respect of the inspections as are required by the Director.

Notice to Registrar of C.P.S.O.

26.—(1) Where the Director is of the opinion that there is reasonable ground for belief that there is or has been a contravention of section 3, the Director may give notice to the Registrar of the College.

Idem

(2) Where the Director is of the opinion that there is reasonable ground for belief that the quality and standards of service provided in a health facility operated under subsection 7 (3) do not comply with the regulations or, in the absence of regulations, do not conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility, the Director may give notice to the Registrar.

Appointment of inspectors by Registrar

(3) Upon receipt of a notice under subsection (1) or (2), the Registrar shall appoint in writing one or more persons as inspectors to make the inspection.

Notice by inspector

(4) Before making an inspection, an inspector shall give written notice to the person who appears to be in control or management of the health facility.

Progress reports

(5) The Registrar shall report to the Director upon the appointment of the inspector or inspectors and, at the request of the Director, upon the progress of the inspection.

Report to Registrar

(6) An inspector appointed by the Registrar shall make the inspection and shall make such reports and interim reports in respect of the inspection as are required by the Registrar.

(7) The Registrar shall report the result of the inspection to the Director. Report to Director

(8) The Registrar shall also report the result of the inspection to the Executive Committee or such other committee of the College as the Registrar considers appropriate. Report to College

(9) Reports and interim reports under this section shall be made at such times, in such form, in such detail and with such supporting material as is required by the person or body to whom the report is to be made. Time and form of reports

27.—(1) The Registrar may appoint persons in writing as assessors. Appointment of assessors

(2) The Council of the College, or a committee established by the Council acting on the direction of the Council, may appoint persons as assessors. Appointment by committee of College

(3) Where the Director considers it necessary or advisable that assessments be carried out of the quality and the standards of services provided in a health facility referred to in subsection 32 (2), the Director may give notice in writing to the chief administrative officer of the governing, registering or licensing body of a health profession or to the licensee or operator of the health facility. Appointment upon notice

(4) The Director is not required to give notice to or consult with the licensee or operator of the health facility before giving notice to the chief administrative officer of the governing, registering or licensing body of a health profession. Choice of notice

28.—(1) Upon receipt of notice under section 27, the chief administrative officer of the governing, registering or licensing body of a health profession shall appoint one or more persons in writing as assessors. Appointment of assessor

(2) The chief administrative officer shall report to the Director upon the officer's appointments of assessors under subsection (1) and upon the assessments made by them. Reports to Director

(3) The chief administrative officer shall make the reports at such times, in such form, in such detail and with such supporting material as is required by the Director. Time and form of reports

29.—(1) A notice by the Director to the licensee or operator of a health facility under section 27 shall state that the Director intends to require an assessment of the quality and the standards of services provided in the health facility and Notice to operator or licensee

that the licensee or operator may consult with the Director in respect of the person or persons to be appointed as assessors.

Appointment of assessor

(2) Where the Director and the licensee or operator agree upon the person or persons to be appointed, the Director may appoint the person or persons to make the assessment.

Qualifications of assessor

(3) An assessor appointed under this section,

(a) must be a physician if the services are provided by a physician in the health facility; and

(b) must not be a public servant within the meaning of the *Public Service Act*.

R.S.O. 1980, c. 418

Reports

(4) An assessor appointed under this section shall report to the Director and to the Registrar in such form, in such detail, with such supporting material and at such times as the Director or the Registrar, or both, requires.

Notice to a chief administrative officer

(5) If the Director and the licensee or operator do not agree upon the person or persons to be appointed, the Director may give notice to the chief administrative officer of the governing, registering or licensing body of a health profession under section 27.

Powers of assessor

30.—(1) An assessor, after giving written notice to the licensee or operator of a health facility, for the purposes of assessing the medical care provided to one or more persons in the health facility, may,

(a) inspect and receive information from medical records or from notes, charts and other material relating to patient care and reproduce and retain copies thereof; and

(b) interview the licensee or operator and members of the staff of the health facility on matters that relate to the quality and standards of service provided in the health facility.

Notice by assessor

(2) A notice under subsection (1) shall, where practicable, state the subject-matter of the interview and the identity, if known, of the person or persons to be interviewed.

Notice by licensee or operator

(3) A licensee or operator who receives written notice under subsection (1) shall forthwith give written notice to each person who may be interviewed of the subject-matter of the interview.

Legal representation

(4) The notice by the licensee or operator shall inform the person that the person is entitled to be represented by legal counsel.

Assessment

31.—(1) It is the function of an assessor to carry out assessments of the quality and the standards of services provided in independent health facilities.

Co-operation by licensees

(2) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an assessor carrying out an assessment of an independent health facility operated by a licensee.

Idem

(3) The co-operation required of a licensee includes,

(a) permitting the assessor to enter and inspect the premises of the independent health facility;

(b) permitting the assessor to inspect records, including patient records;

(c) providing to the assessor information requested by the assessor in respect of records, including patient records, or the care of patients in the independent health facility;

(d) providing the information mentioned in clause (c) in the form requested by the assessor;

(e) permitting the assessor to make or take and remove samples of any substance on the premises of the independent health facility;

(f) providing samples mentioned in clause (e) as requested by the assessor; and

(g) conferring with the assessor when requested to do so by the assessor.

Inspection of health facilities

32.—(1) An inspector appointed by the Registrar may, at any reasonable time, without a warrant, enter any premises of a health facility to make an inspection,

(a) in respect of a health facility operated by a person not licensed under this Act, to determine whether there is or has been a contravention of section 3; and

(b) in respect of a health facility operated under subsection 7 (3) by a person not licensed under this

Act, to ensure that the quality and standards of services provided in the facility comply with the regulations or, in the absence of regulations, conform to the generally accepted quality and standards for the health facility and the service or services provided in such a health facility.

Inspector appointed by Minister

(2) An inspector appointed by the Minister may, at any reasonable time, without a warrant, enter any premises of an independent health facility operated by a person licensed under this Act, to make an inspection to ensure that this Act and the regulations, and the limitations and conditions, if any, of the licence, are being complied with.

Search of premises other than health facilities

(3) Where an inspector has reasonable ground to believe that there is in any premises, other than a health facility, any thing that there is reasonable ground to believe will afford evidence as to the commission of an offence under this Act or in relation to the establishment or operation of an independent health facility licensed under this Act, the inspector may apply under section 142 of the *Provincial Offences Act* for a warrant to enter and search the premises.

R.S.O. 1980, c. 400

Private residence

(4) Subsection (1) is not authority to enter a private residence without the consent of an occupier, except under the authority of a warrant under section 33.

Exempt health facilities

(5) Subsection (1) is authority to enter a health facility that is, under section 2, otherwise exempt from the application of this Act.

Powers on inspection

(6) Upon an inspection under this section, the inspector,

(a) has the right to inspect the premises and the operations carried out on the premises;

(b) has the right to free access, at any reasonable time, to all books of account, documents, correspondence and records, including payroll, employment, patient and drug records and any other records that are relevant for the purposes of the inspection, regardless of the form or medium in which such records are kept, but if such books, documents, correspondence or records are kept in a form or medium that is not legible, the inspector is entitled to require the person apparently in charge of them to produce a legible physical copy for examination by the inspector;

(c) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment

issued by the Minister, any material referred to in clause (b) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that the material is promptly returned to the person apparently in charge of the premises from which the material was removed;

(d) has the right, at any reasonable time, to make and take or require to be made or taken samples of any substance on the premises;

(e) has the right to remove, upon giving a receipt therefor and showing the certificate of appointment issued by the Minister, any sample referred to in clause (d) that relates to the purpose of the inspection for the purpose of making an analysis thereof; and

(f) may question a person on matters that are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the examination.

Co-operation by licensees

(7) It is a condition of every licence that the licensee and the staff and employees of the licensee shall co-operate fully with an inspector carrying out an inspection of an independent health facility operated by a licensee.

Warrant to enter and inspect

33.—(1) A provincial judge or justice of the peace may issue a warrant in the form prescribed by the regulations where the judge or justice is satisfied upon application by an inspector, on information upon oath, that there is reasonable ground for believing that it is necessary to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) in respect of a health facility and,

(a) no occupier is present to grant access to a premises that is locked or otherwise inaccessible;

(b) no occupier is present to grant access to a private residence; or

(c) an occupier of the premises,

(i) has denied an inspector entry to the premises,

(ii) has instructed an inspector to leave the premises,

(iii) has obstructed an inspector,

(iv) has refused to produce to an inspector any material referred to in clause 32 (6) (b), or

(v) has refused to make or take a sample as required in clause 32 (6) (d).

Authority given by warrant

(2) A warrant issued under subsection (1) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officer or officers as the inspector calls upon for assistance, to do anything set out in clause 32 (6) (a), (b), (c), (d) or (e) and specified in the warrant.

Execution of warrant

(3) A warrant issued under subsection (1) shall be executed at reasonable times.

Expiry of warrant

(4) A warrant issued under subsection (1) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application without notice

(5) A provincial judge or justice of the peace may receive and consider an application for a warrant under subsection (1) without notice to and in the absence of the owner or occupier of the premises.

Admissibility of copies

34.—(1) Copies of material removed from premises under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the material of which they are copies.

Analysis report as evidence

(2) A certificate or report of an analysis of a sample removed from premises under this Act that purports to be signed by the laboratory technician who carried out the analysis shall be received in evidence as proof, in the absence of evidence to the contrary, of the facts stated in the certificate or report without proof of the signature or position of the person appearing to have signed the certificate or report.

Obstruction of inspector

35. No person shall obstruct an inspector or withhold or conceal from an inspector any book, document, correspondence, record or thing relevant to the subject-matter of an inspection.

Definitions

36.—(1) In this section,

R.S.O. 1980, c. 197

"Board" means the Health Services Appeal Board under the *Health Insurance Act*;

"Plan" means the Ontario Health Insurance Plan referred to in section 10 of the *Health Insurance Act*.

Plan to reimburse facility fee

(2) Where the Director is satisfied that a person has paid a facility fee all or part of which was charged in contravention of section 3, the Director may direct that the amount of the facility fee that was charged in contravention of section 3 be paid to the person out of the Plan.

Fee is debt to Plan

(3) The person who charged the facility fee referred to in subsection (2) is indebted to the Plan for an amount equal to the amount paid out of the Plan under subsection (2) and the administrative charge prescribed by the regulations.

Set-off against Plan

(4) If the person who charged the facility fee referred to in subsection (2) is a person who submits accounts directly to the Plan, then, subject to subsections (5), (6) and (8), part or all of the money owed to the Plan under subsection (3) may be recovered by set-off against any money payable to the person by the Plan.

Notice of proposed set-off

(5) The Director shall serve notice of the proposed set-off referred to in subsection (4), together with written reasons therefor, on the person who is indebted to the Plan.

Notice requiring hearing by Board

(6) A notice under subsection (5) shall inform the person that he or she is entitled to a hearing by the Board if the person mails or delivers, within fifteen days after the notice under subsection (5) is served on the person, notice in writing requiring a hearing to the Director and the Board, and the person may so require a hearing.

Powers where no hearing

(7) Where a person does not require a hearing by the Board in accordance with subsection (6), the proposed set-off stated in the notice under subsection (5) may be carried out.

Powers of Board where hearing

(8) Where a person requires a hearing by the Board, the Board shall appoint a time for and hold the hearing and the Board may by order direct that the proposed set-off be carried out or refrained from being carried out, and for such purposes, the Board may substitute its opinion for that of the Director.

Extension of time for requiring hearing

(9) The Board may extend the time for the giving of notice requiring a hearing by a person under this section either before or after expiration of such time where it is satisfied that there are grounds for granting relief to the person following upon a hearing and that there are reasonable grounds for applying for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

ss. 21, 22 apply

(10) Sections 21 and 22 apply with necessary modifications to a hearing and decision by the Board under this section.

Disclosure of information R.S.O. 1980, c. 197

(11) Despite subsection 44 (1) of the *Health Insurance Act*, the General Manager may furnish to,

(a) a member of the Board;

(b) the person who was charged or who paid the facility fee;

(c) the person who charged or accepted payment of the facility fee and counsel for the person;

(d) any person engaged in the administration of this Act or the regulations or any proceedings under this Act or the regulations;

(e) any other person with the consent of the person to whom the services were provided in respect of which the facility fee was charged,

information pertaining to the nature of the services provided, the date or dates on which the services were provided and for whom, the name and address of the person who provided the services, the amounts paid or payable by the Plan for such services, and the persons to whom the fee for the insured service and the facility fee were paid or are payable, for the purpose of this section.

Definition

37.—(1) In this section, "confidential information" means information obtained by a person employed in the administration of this Act or making an assessment or inspection under this Act in the course of the person's employment, assessment or inspection and that relates to a patient or former patient of a health facility.

Confidentiality of information

(2) No person shall communicate confidential information to any person except in accordance with subsection (4).

Application

(3) Subsection (2) applies to any person whether or not the person is or was employed in the administration of this Act or is or was an inspector or assessor under this Act.

Communication of confidential information

(4) A person employed in the admininstration of this Act, an assessor or inspector under this Act or any person who obtains confidential information pursuant to this subsection may communicate confidential information,

(a) in connection with the administration or enforcement of any Act or any proceedings under any Act;

(b) in connection with matters relating to professional disciplinary proceedings, to a statutory body governing a health profession;

(c) to the person's counsel; or

(d) with the consent of the patient or former patient to whom the information relates.

Testimony by officials in civil suits

(5) No person employed in the administration of this Act or who made an inspection or assessment under this Act shall be required to give testimony in a civil action or proceeding with respect to any information obtained in the course of the person's employment, assessment or inspection except in a proceeding under an Act or a regulation under an Act.

Closed proceedings

(6) A provincial offences court may exclude the public from proceedings to enforce any Act if the court is of the opinion that confidential information may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of that information in the interests of any patient or former patient to whom it relates outweighs the desirability of adhering to the principle that hearings be open to the public.

Immunity

38. No action or other proceeding for damages shall be commenced against an inspector, an assessor, the Director, the Registrar, the Council of the College or a committee established by the Council, the Board, or a member of the Council, the committee or the Board for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or the regulations, or for any neglect or default in the performance or exercise in good faith of such power or duty.

Offences

39.—(1) Every person who contravenes section 3, 11, 35 or 37 is guilty of an offence.

Corporate offences

(2) Every person who contravenes section 13, 14, 15 or 16 is guilty of an offence.

Breach of regulations

(3) Every person who contravenes the regulations is guilty of an offence.

Penalty

(4) Every person who is guilty of an offence under this section is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more

than $5,000 on a first conviction and not more than $10,000 on each subsequent conviction.

Corporation

(5) Where a corporation is convicted of an offence under this section, the maximum penalty that may be imposed for every day or part of a day on which the offence occurs or continues is $25,000 on a first conviction and $50,000 on each subsequent conviction, and not as provided in subsection (4).

Penalty

(6) Every person who is guilty of an offence under this section for contravention of section 11 or subsection 13 (2) is liable on conviction, in addition to any fine under subsection (4) or (5), to a fine not exceeding the amount of money or the value of the consideration paid, transferred, accepted or received in contravention of section 11 or subsection 13 (2).

Restraining order

40.—(1) In addition to any other remedy and to any penalty imposed by law, a contravention of section 3 may be restrained by action at the instance of the Attorney General.

Restraining order upon conviction

(2) Upon its own initiative or upon application by counsel for the prosecutor, the court that convicts a person of an offence under this Act, in addition to any other remedy and to any penalty imposed by law, may make an order prohibiting the continuation or repetition by the person of the action that constitutes the offence.

Annual Report

41. The Minister shall annually prepare a report on the implementation of this Act and submit it to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Regulations

42.—(1) The Lieutenant Governor in Council may make regulations,

1. exempting any health facility or class of health facility from the application of this Act or the regulations or any provision thereof;

2. governing the process for submitting proposals;

3. governing applications for renewals of licences;

4. prescribing forms and providing for their use;

5. prescribing fees for licences, for transfers of licences and for renewals of licences;

6. classifying health facilities or independent health facilities;

7. respecting and governing the care, treatment and services provided in independent health facilities or any class thereof;

8. prescribing and governing the quality and the standards of services provided in independent health facilities or any class thereof;

9. prescribing and governing the quality and the standards of independent health facilities or any class thereof;

10. prescribing and governing the requirements for staff and employees of independent health facilities or any class thereof;

11. prescribing and governing the construction, establishment, location, equipment, maintenance and repair of, additions and alterations to, and operations of independent health facilities or any class thereof;

12. prescribing the books, records and accounts that shall be kept by licensees including their form and content and the place or places where they shall be kept;

13. requiring the accounts of independent health facilities to be audited and requiring the licensees to furnish such information or accounts as may be required by the Director;

14. prescribing and governing the records that shall be kept by licensees with respect to the care and treatment of patients of the independent health facility;

15. governing the reports and returns that shall be made to the Director by licensees;

16. requiring and governing the system or systems that shall be kept by licensees to monitor the results of the services provided in independent health facilities or any class thereof;

17. governing access to patient or drug records and specifying persons who may have access to such records;

18. prescribing other duties of assessors;

19. prescribing other duties of inspectors;

20. classifying services;

21. exempting any service or class of service from the application of this Act or the regulations or any provision thereof;

22. prescribing services, classes of services and operating costs that are not part of an insured service and that do not support, assist and are not a necessary adjunct, or any of them, to an insured service;

23. prescribing services, classes of services and operating costs that are part of the insured service;

24. prescribing any services, any classes of services and any operating costs that are not part of an insured service and that support, assist and are a necessary adjunct, or any of them, to the insured service;

25. prescribing the maximum amount a person may charge for services or operating costs prescribed under paragraph 24;

26. prescribing conditions that shall attach to licences of independent health facilities or any class or classes thereof;

27. prescribing administrative charges for the purposes of section 36;

28. governing and restricting the disposition and transfer of the assets of independent health facilities;

29. prescribing the maximum allowable consideration in relation to a licence or prescribing a method for determining the maximum allowable consideration;

30. prescribing the allocation of the maximum allowable consideration in relation to a licence held by a corporation among the shares of the corporation or prescribing a method for determining the allocation;

31. making any regulation made under paragraphs 1 to 30 applicable to independent health facilities operated under subsection 7 (3) or to the persons who operate the facilities;

32. exempting any person who operates a health facility that is approved, licenced or designated under any other Act or any class of such persons from the application of this Act or the regulations or any provision thereof.

Scope of regulations

(2) A regulation may be general or particular in its application.

Delegation in regulations

(3) In a regulation made under paragraph 29 or 30, the Lieutenant Governor in Council may delegate the determination of any matter to the Minister or persons the Minister may designate in writing.

COMPLEMENTARY AMENDMENT

43.—(1) Subsection 51 (1) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clauses:

(ja) prescribing constituent elements that are part of insured services rendered by physicians or by practitioners;

(jb) prescribing constituent elements that shall be deemed not to be part of insured services rendered by physicians or by practitioners.

(2) Section 51 of the said Act is amended by adding thereto the following subsection:

Services designated without prescribing amounts payable

(4) The Lieutenant Governor in Council may make regulations under clause (1) (j) prescribing services that are insured services without prescribing any amounts payable by the Plan for those services.

(3) The said section 51 is further amended by adding thereto the following subsection:

Fees related to independent health facilities
R.S.O. 1980, c. 410
1989, c. 59

(5) A regulation may prescribe an amount payable by the Plan for an insured service rendered in a hospital that has been approved under the *Public Hospitals Act* without prescribing an amount payable if the service is rendered in a health facility operated by a person to whom subsection 7 (7) of the *Independent Health Facilities Act, 1989* applies.

Commencement

44. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

45. The short title of this Act is the *Independent Health Facilities Act, 1989*.

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